

Nos. 9509, 9531

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United States

Circuit Court of Appeals

For the Ninth Circuit.

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No. 9509

GEORGE H. CORNES,

Appellant,

vs.

UNITED STATES OF AMERICA,

Appellee.

No. 9531

EARL CANNING,

Appellant,

vs.

UNITED STATES OF AMERICA,

Appellee.

Transcript of Record

In Two Volumes

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VOLUME II

Pages 499 to 971

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Upon Appeals from the District Court of the  
United States for the District of Arizona.



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Upon Appeals from the District Court of the  
United States for the District of Arizona.



## R. W. TAYLOR

was called as a witness on behalf of the Government and having heretofore been duly sworn testified as follows:

## Direct Examination

The Witness: My name is R. W. Taylor. I live at Coolidge. I am high school principal. I purchased bonds of the State Securities Corporation, Government's Exhibit 55 for identification is the bond that I purchased. I purchased no other bonds. I purchased that one in February, 1931. I bought it from Mr. Parsons. I talked at different times about the bond with Mr. Marquis and later with Mr. Cornes and Mr. Hamilton. I talked with Mr. Marquis a few times in 1931 and 1932. I was trying to get out of purchasing the bond and he wanted me to continue the [396] payments. He told me the company was bound to succeed. It would be a valuable bond and the company had been obligated to a certain extent because of my purchase and it would be against the welfare of the company if I should drop it. At other times I discussed with Mr. Marquis the insurance company. He called at my home in Florence and I was also in his office in 1933. Both Mr. R. F. Marquis and Mr. H. S. Marquis came to see me. Mr. H. S. Marquis called about the payment of the bond. I don't recall the exact conversation, but it was in the nature of getting me to go ahead with the purchase of the bond. I later had a conversation with Mr. Cornes, either in December, 1937 or January 1938. No

(Testimony of R. W. Taylor.)

one else was present. I was attempting at that time to get a loan on the bond. I had written to the company on several occasions to get a loan and I could not get any response so I finally came to the office. Mr. Cornes suggested that I turn this bond in on an insurance policy, but I was not interested. Mr. Hamilton came to see me in December, 1937 at my office in Florence. He wanted to know why I wanted to borrow the money and when. I told him I wanted it in February. He suggested to change it to stock or insurance. I told him I needed the money and he finally asked me if April 1 would be all right for the loan. I finally agreed to it. I don't believe I saw him again. Shortly after that I went in and talked to Mr. Cornes. I have seen Government's Exhibit 56 which is a letter, statement and printed memorandum, before. They were mailed to me on those dates. They all came with the letter in the envelope addressed to me.

Counsel for plaintiff thereupon offered in evidence Government's Exhibit 56, to which objection was made on the same grounds as to Exhibit 40 in evidence; that it is dated December, 1931 and February 1, 1932 and is too remote, irrelevant, incompetent and immaterial, and for the further reason that a part of [397] the exhibit seems to be relative to Western National Life Insurance Company and appears to have no relation to anything charged in the indictment; that one sheet purports to be

(Testimony of R. W. Taylor.)

a balance sheet of December 31, 1931 of State Securities Corporation, is too remote and entirely outside of the issue and has no probative value. That it has not been properly identified, no foundation laid for the introduction against any of the defendants and is hearsay, which objection was by the court overruled and to which an exception was duly taken and entered in the record.

Whereupon the documents were received as Government's Exhibit No. 56 in evidence, which abstracted to the issue is: [398]

GOVERNMENT'S EXHIBIT NO. 56

State Securities Corporation

Phoenix, Arizona

Suite 509 Ellis Building      February 1st, 1932

Dear Security-holder

We take pleasure in enclosing herewith copy of Balance sheet compiled by our Auditors as of December 31st, 1931.

This is our Second Annual statement and the instrument is submitted without comment. The items therein disclosed, we confidently believe, establish a record of achievement that shall cause the strictest vigilance and effort to maintain.

In accordance with our former letter, Articles of Incorporation of the Western National Life Insurance Company were duly filed on Mon-

(Testimony of R. W. Taylor.)

day, January 4th, 1932. After being approved by the various divisions of the State Department, and recorded as is required by law in all respects, formal Certificate was issued on January 19th, 1932. A reprint from a Phoenix daily paper announcing the organization of the Company is enclosed in this letter.

We confidently look forward, during the coming months, to a better adjustment of the general financial situation and to the maintenance of the enviable progress thus far made in accomplishing our ultimate purposes. It is quite necessary, however especially in view of prevailing conditions, that we maintain the strong financial position our Company now enjoys, and to these purposes the efforts of your management shall continue to be devoted.

Tuesday, February 9th, 1932 will mark the second Statutory meeting; complete report of which will be mailed to you.

Yours very truly

R. F. MARQUIS

RFM:KM

Secretary-treasurer [399]



(Testimony of R. W. Taylor.)

BALANCE SHEET

December 31, 1931

State Securities Corporation  
Phoenix, Ariz.

Assets:

Cash on hand and in Bank.....	1,095.46
Bills Receivable secured by First Liens.....	111,026.40
Net Renewal Premiums due and Deferred on which full Legal Reserve is set up.....	26,022.70
Current Bills Receivable Not due, Deferred, extended and in process adjustment.....	5,020,073.74

Total.....	640,218.30
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Liabilities:

Legal Reserve on Bonds Outstanding and Extra Reserves	82,029.95
Legal Reserve on Bonds in Process Adjustment .....	11,794.81
Voluntarily Reserved for Contingencies and Special Items.....	410,733.13

Total.....	504,557.89
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Excess Assets over Liabilities.....	135,660.41
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Total.....	640,218.30
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(Reprint from Phoenix Gazette Jan. 20, 1932)

New Insurance Firm Granted Charter Here

A certificate of incorporation has been issued  
by the Arizona corporation commission to the

(Testimony of R. W. Taylor.)

Western National Life Insurance company, with headquarters in Phoenix.

The charter designates the firm as a legal reserve life insurance company with a capital stock of \$100,000.

Directors of the new company are E. J. Flanigan, George H. Cornes, H. S. Marquis, N. C. Bledsoe, F. T. Hogeland, L. J. Hall, R. F. Marquis, A. K. Perry, George Young, Henry James, B. E. Leonard, John Moore, W. E. Hawley and J. M. Meason. [400]

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The Witness: I paid \$750.00 in full for the bond and never secured a loan on it. I came in to see about it. I was referred to Mr. Canning, who was receiver, and he told me there was nothing doing.

Mr. Carson: We object to anything concerning that conversation. It was after any time mentioned in the indictment and after the completion of any accounts that are here charged, irrelevant, immaterial and incompetent and immaterial; that the answer be stricken and the jury instructed to disregard it, which motion was by the court denied and an exception duly taken and entered in the record.

Thereupon counsel for plaintiff offered in evidence Government's Exhibit 55, which was received in evidence and marked as Government's Exhibit

(Testimony of R. W. Taylor.)

No. 55 in evidence, and which abstracted to the issue is: [401]

GOVERNMENT'S EXHIBIT NO. 55

Number Chartered Under the Laws      Dollars  
646                                      of Arizona

Five Year Payment

Ten Year Endowment Gold Bond

Purchase Price \$750

Maturity Value \$1000

State Securities Corporation

Phoenix, Arizona

Will pay One Thousand Dollars (\$1000.00)  
to the order of

R. W. Taylor

ten years after the date hereof if this bond then be in full force and effect, subject to the conditions hereof and to the terms of the subscription herefor, of even date herewith, less any indebtedness hereon.

Restricted Investment of Funds

The purchaser hereof grants to the Company full permission to use the entire net proceeds of all sums paid hereon for the sole purpose of purchasing State, County, Municipal, School district, United States Government bonds, Notes secured by First Mortgage upon real estate, or other securities, Acceptable to the department of Insurance of the State of

(Testimony of R. W. Taylor.)

Arizona as admitted assets of domestic Legal Reserve Life Insurance Companies to be used solely to furnish Capital, Surplus and Reserves of any Legal Reserve Life Insurance Company which it may purchase, own or otherwise control, and in consideration thereof, said purchaser shall be granted the following bonus:

#### Cash Bonus

A sum equal to Five per cent of the net premiums received on all insurance, excepting reinsurance, written by any insurance company purchased, owned, or controlled by this company, will be assigned to a separate and distinct bonus fund. On the first day of June of each and every year during the period of ten years from the date hereof, unless this bond shall have been matured or retired as herein provided, the holder of this bond shall be paid a pro rata share of said fund, in the same proportion that this bond bears to the total number of bonds authorized and/or issued.

#### Stock Bonus

Five years after date, providing the purchaser has made all payments due hereon, the company will issue and deliver to the then owner of this bond Five shares of its capital stock, fully paid and non-assessable, together with a check for all dividends apportioned by the board of directors and then standing to

(Testimony of R. W. Taylor.)

the credit of the stock so issued. Thereafter the company will not offer its stock for public subscription for less than \$100.00 per share. [402]

#### Cash Loan

After the second bond year this bond shall be subject to a loan of the various sums indicated and in accordance with the table of loan values on the second page hereof, out of the various payments, accumulations, and/or available funds, provided no payments to the company required hereunder are in default. Any indebtedness to the company will be deducted from the amount of said loan. Loans shall bear interest at the rate of six per cent per annum, payable in advance, and application therefor made on forms furnished by the company.

#### Non-forfeiture Provision

This Bond shall be non-forfeitable except for the non-payment of the amounts agreed upon to be paid by the holder hereof. Any payment two months past due will be considered in default and will lapse the Bond and the holder forfeits all right, title and interest in or to any of the benefits and bonuses contained herein, but the loan value, if any, shall not be impaired. Should default occur before this bond shall become subject to loan, the company will, five years from date hereof, issue and deliver

(Testimony of R. W. Taylor.)

to the holder hereof as many shares of its paid up, non-assessable capital stock as the number of payments made hereon will purchase on a basis pro-rated to the total number of payments required hereunder, provided, however, that in no event shall there be issued to the holder of each bond so defaulted a less number than two shares of such capital stock.

#### Consideration

This bond is issued in consideration of the subscription herefor and of the payment to the company at its offices in Phoenix, Arizona, without notice, the sum of \$750.00 in the following manner: \$150.00 with and upon application, receipt of which is hereby acknowledged and a like sum annually, in advance until the full purchase price has been paid. A payment more than sixty days past due shall be deemed in default. This bond shall be deemed in full force and effect only so long as no payment is in default.

#### Legal Reserve Maintained

The company maintains a reserve sufficient to mature this bond as herein provided, ten years from its date.

In witness whereof, the State Securities Corporation has caused this instrument to be duly executed and its name to be subscribed hereto by its president and attested by its secretary

(Testimony of R. W. Taylor.)

and its corporate seal to be hereto affixed in the city of Phoenix, Arizona, this 12th day of February, 1931.

GEORGE H. CORNES

President.

Attest:

R. F. MARQUIS

Secretary.

(Corporate Seal) [403]

(Bearing on the Reverse Side)

Number 646—Five year payment—ten year endowment gold bond—\$1000—State Securities Corporation—Phoenix, Arizona—R. W. Taylor, Florence, Arizona.

Table of Loan Values

At end of Second Bond Year and subsequent to payment of third premium .....	\$ 300.00
At end of Third Bond Year and subsequent to payment of fourth premium .....	485.00
At end of Fourth Bond Year and subsequent to payment of fifth premium .....	658.00
At end of Fifth Bond year.....	747.00
At end of Sixth Bond year.....	792.00
At end of Seventh Bond year.....	840.00
At end of Eighth Bond year.....	890.00
At end of Ninth Bond year.....	943.00
At end of Tenth Bond year.....	1,000.00

(Testimony of R. W. Taylor.)

Cross Examination

The Witness: I received all of Government's Exhibit 56 in the same envelope in 1932. I received Government's Exhibit 55 in evidence in 1931 shortly after February 12. I have had the bond from that time on. I first met Hamilton in Florence in 1937. He came down and discussed with me why I wanted a loan. He said that he had been sent down by State Securities Corporation. I had never met him before. Didn't know anything about him until I saw him there. I believe I have met Mr. Cornes in the office before the fall of 1937. I had no business transaction with him. I don't recall having a conversation with Mr. Cornes in my office in Florence in the fall of 1937. I saw him at his office in December, 1937 or January, 1938. It was after Mr. Hamilton called on me. My impression is it was late in December. He suggested transferring my bond for insurance or stock. I first saw R. F. Marquis shortly after I bought the bond. He called on me in Florence and I saw him in his office. I had given a note for the first payment on the bond. I finally paid the bond out. I wrote and asked about a loan and was told a representative would call on me. I knew when I bought the bond that the money I paid was set up as a reserve to retire the bond and to be used to finance a life insurance company. I asked for the loan about the time they bought the life insurance company. I



(Testimony of R. W. Taylor.)

asked for it by mail and did not receive a satisfactory reply. I don't remember that I was told that the Corporation Commission had ordered the State Securities Corporation not to make any loans on the bonds. I was informed that the money was obligated. I don't recall the specific purpose, but I was told it was not available. I got the five shares of State Securities Corporation stock provided for in the bond. I also got checks [405] in two different amounts for my five per cent of the net premium.

#### Redirect Examination

The Witness: I received one check for \$3.00 and something and the other in a similar amount. I don't recall exactly.

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#### DANIEL GRANT

was recalled and testified further as follows:

#### Recross Examination

The Witness: I remember when a part of the Yuma property was taken by the company in 1929 or 1930. A part of the land belonged to Mrs. Bonar and a part to Dr. Hogeland, and five acres to Mr. Hamilton—about thirty acres in all. I saw the land then. It was overgrown with weeds and needed cleaning up. I thought the grove could be saved, but was not sure what the production would be. I undertook the care of the grove and did care for

(Testimony of Daniel Grant.)

it until they closed in 1938. They later took over twenty acres more from G. L. Fields and I took care of that. They paid me for it, but they still owe me a little money. A part of the money I earned went to pay for stock. I was out a lot of expense and they issued to me some stock. Mr. Fields was not connected with the company prior to the time they took over his land. Mr. Fields was unable to pay me \$2,000.00 he owed me. When the company took over I was to get \$2,500.00 in stock. They paid me during the time I took care of the grove some \$11,000.00 or \$12,000.00.

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L. JOE HALL

was called as a witness in behalf of the Government, and having been heretofore duly sworn, testified as follows:

The Witness: My name is L. Joe Hall. I live in Tucson. I am an automobile salesman. I was an officer, director and salesman with the State Securities Corporation. I became [406] connected with the State Securities in September, 1930. I made three different purchases of stock in the company. Government's Exhibit 57 for identification is the first stock I purchased in the company.

A check was then marked Government's Exhibit 58 for identification.



(Testimony of L. Joe Hall.)

holder hereof in person or by Attorney, upon surrender of this Certificate properly endorsed.

In witness whereof, the said Corporation has caused this Certificate to be signed by its duly authorized officers and to be sealed with the Seal of the Corporation this 29 day of June A.D. 1930

(Corporate Seal) R. F. MARQUIS  
 Secretary  
 R. J. LEAVITT  
 President

Shares Each  
 (Bearing on the Reverse Side)  
 Certificate  
 for  
 600  
 Shares  
 of the  
 Capital Stock  
 State Securities Corporation  
 Issued to  
 L Jo Hall  
 Dated  
 June 29 1930

For Value Received, ..... hereby sell, assign and transfer unto ..... Shares of the Capital Stock represented by the within Certificate, and do hereby irrevocably constitute

(Testimony of L. Joe Hall.)

and appoint ..... to transfer the said Stock on the books of the within named Corporation with full power of substitution in the premises.

Dated..... 19.....

In presence of

.....

Notice. The signature of this assignment must correspond with the name as written upon the face of the certificate in every particular, without alteration or enlargement or any change whatever. [408]

GOVERNMENT'S EXHIBIT NO. 58

Check dated August 18, 1930 drawn to the order of State Securities Corporation signed by L. Jo Hall:

Lowell, Arizona, Aug 18th 1930  
Bank of Lowell 91-68

Pay to State Securities Corp or order, \$6000.00  
Six Thousand and no/100.....Dollars

L. JO HALL

The Witness: I never authorized the issuance out of this stock certificate of stock to anyone else. Government's Exhibit 59 for identification is a check for the first payment on a 1/8 interest in 25

(Testimony of L. Joe Hall.)

acres of grapefruit land which I delivered either to Mr. Cornes or Mr. R. F. Marquis.

Mr. Flynn: Did you ever receive any deed or instrument of conveyance conveying to you that interest in that land?

Mr. Carson: Just a minute, your Honor, I object as irrelevant, incompetent and immaterial and not within the issues alleged by this indictment or contained in the bill of particulars. This is an indictment indicating the charge of a scheme to defraud through the sale of corporate securities of one or the other of these companies. This relates to citrus land in Yuma, according to the witness's testimony, which would have no bearing of any kind on this, and it is irrelevant, incompetent and immaterial, and pure hearsay and not binding.

The Court: The objection is overruled, gentlemen.

Mr. Carson: Exception on behalf of defendant Canning.

The Court: Yes.

The Witness: I received a letter from Mr. Marquis acknowledging receipt and I don't remember whether there was a deed. I never did receive a deed. I purchased the original 600 shares of stock and then I purchased a  $\frac{1}{4}$  interest in [409] the stock allotted to Mr. Leavitt, which was approxi-

(Testimony of L. Joe Hall.)

mately 2,000 shares, for which I paid \$3,500.00. I paid for it in two payments. I afterwards purchased \$1,500.00 worth of stock, being 171 shares, at \$10.00 a share, less the salesman's commission, and took an option on 900 shares, less the 171. I paid a total of \$11,000.00 for stock in the State Securities Corporation. The one certificate of 600 shares was all that was issued to me personally. I resold less than \$1,000.00 worth of the stock. I didn't sell any to Mrs. Etz. In 1937 I had conversations about the affairs of the company with Mr. R. F. Marquis and Mr. Cornes. A number of stockholders had asked me why we didn't have a stockholders' meeting, and I in turn asked Mr. Marquis. He said the by-laws provided for stockholders' meetings to be held on given dates each year, and the stockholders should know when that was and attend the meetings without notice. Mr. Cornes originally talked to me about buying stock. The deal was later consummated in the presence of R. F. Marquis, Mr. Cornes and Mr. Leavitt.

#### Cross Examination

The Witness: My first experience with the company was in the summer of 1930. I was active with the company from that date until the summer of 1932 as a salesman. I received a commission on what I sold. I sold a good many bonds and considerable stock to friends. I thought the company was a good investment. I didn't learn differently

(Testimony of L. Joe Hall.)

that it was not until it became defunct. I was an officer during the time I was active and maybe for a short period afterwards. I don't know when that was terminated. I attended meetings of the Board of Directors of the State Securities Corporation once each year. I think with the exception of one year, I attended the directors' meetings from 1931 up to 1937. [410]

Mr. Whitney: Now at those meetings, can you recall, I know it is pretty hard to recall way back, but let us go back to the year 1936, can you recall who was there at the directors' meeting of the State Securities Corporation, the meeting in 1936, the annual meeting of the directors?

Mr. Flynn: We object to this. It is not proper cross examination.

The Court: Yes, I think the objection is good, Mr. Whitney.

Mr. Whitney: The objection is sustained?

The Court: Yes.

Mr. Whitney: Exception.

The Witness: I attended one stockholders' meeting of the State Securities Corporation from 1931 to 1937. I can't recall who was at the meeting. There was usually three or four persons. I didn't attend the 1938 meeting. In one instance, Mr. Hawley of Douglas was present. Dr. Meason was there at one or two meetings, Dr. Bledsoe at two or three of the meetings. There may have been two or three



(Testimony of L. Joe Hall.)

others. I was a director in the Union Reserve Life Insurance Company. Each director was sold one share of stock. I was a stockholder in that company on March 14, 1938. The one share of stock in the Union Reserve I never had in my possession. I don't know who were stockholders. The two Marquis brothers and Cornes owned stock and Dr. Bledsoe, Dr. Hogeland, A. N. McClellan and George Young. I know the State Securities Corporation owned all the balance. I don't remember attending any executive committee meetings of the Union Reserve Life Insurance Company nor of the State Securities Corporation. I never saw or examined the minutes of the meetings I attended. I attended a number of directors' meetings. I purchased my last stock from State [411] Securities Corporation sometime in 1931. I never authorized the issuance of any stock out of that to anyone else. Mr. Marquis asked me one time, "We might ask you to give us that certificate that you have for 600 shares of stock." I don't remember that he told me he would need some shares of the stock pending the release from the Corporation Commission of other shares of the promotion stock. I don't remember that he ever asked my permission to use some of my shares until more could be released. I am positive I never gave permission for the issuance of any stock out of this certificate to be returned to me. I worked from 1930 to sometime

(Testimony of L. Joe Hall.)

in 1932. I had arranged to buy a part of the stock of Mr. Leavitt. I don't know whether it was deposited in escrow with the Corporation Commission. I knew I would not get it until it was ordered issued by the Corporation Commission. I was a director of the insurance company from the time the State Securities got it until it was turned over to the Corporation Commission. I held some honorary office. I don't know how long. Part of the time I was salesman, Mr. Cornes and I worked together. Part of the time one of us would talk to the prospects and part of the time the other.

Mr. Wilson: On those occasions did you ever hear Mr. Cornes make any fraudulent representations?

Mr. Flynn: I object to that on the ground that he is asking a question that the jury is going to decide in this case.

The Court: Yes, the objection is sustained.

Mr. Wilson: Then may I ask you to tell what you heard Mr. Cornes say to a prospect when you were present making a sale?

Mr. Flynn: We object to that on the ground it is not proper cross examination. If anything it would be a defensive matter. Certainly we didn't go into that on direct examination. [412]

The Court: I don't see how it ties up with anything the Government presented. The objection is sustained.

(Testimony of L. Joe Hall.)

Mr. Wilson: An exception to the ruling of the Court.

The Court: Let the record show an exception to the ruling.

The Witness: I don't remember if I attended the meeting of the stockholders on January 14, 1937. I attended one meeting that might have been either a stockholders' or a directors' meeting after the first of the year as soon as Mr. R. F. Marquis would get his annual statement prepared.

Mr. Whitney: You don't remember what day of the week it was?

The Witness: I could not tell you the day of the week or I couldn't tell you within thirty days when the meeting was held.

Q. Do you remember some of the things that took place at the meeting that you recall to your attention?           A. Yes.

Q. Or purported to have taken place?

A. Yes.

Mr. Flynn: We object to this line of testimony, your Honor. The principal objection is it is taking up the time of the case. If anything it is a defensive matter. We object to prolonging our part of this trial by letting counsel put on his defense on cross examination. That is not proper cross examination, not having been gone into on direct examination. There may be

(Testimony of L. Joe Hall.)

a time in this case when it is proper. I will object at this time. It is not proper.

Mr. Whitney: May I say this to the Court, I will cut this down as much as I can, but this is a director of this company and he says there were three or four present each time. [413] I want to find out just who those three or four were.

Mr. Flynn: That question was also on cross examination. We didn't ask him anything about it. Counsel got more than he was entitled to.

The Court: As far as the Government went into Mr. Hall, that he was a director of the company.

Mr. Flynn: And bought some stock——

The Court: I don't see what business was transacted and who was present at this meeting. I think it is improper cross-examination at this time.

Mr. Whitney: You think it is improper cross-examination at this time?

The Court: Yes.

Mr. Whitney: Exception.

Q. Now I will ask you the same question at the meeting of August 16, 1936.

Mr. Flynn: The same objection.

The Court: And the same ruling.

Mr. Frazier: Exception.

Mr. Whitney: At the meeting of March 29, 1937?

(Testimony of L. Joe Hall.)

Mr. Flynn: Same objection.

The Court: Yes.

Mr. Whitney: Exception to the same ruling.

Mr. Jones: Mr. Whitney were you making a tender and offer of the minutes that had already been in evidence?

Mr. Whitney: These are already in evidence.

Mr. Jones: What are the Exhibit numbers?

Mr. Whitney: 27C, 27D and 27E of the minute book of the Union Reserve Life Insurance Company.

The Witness: I attended some meetings of the Board of Directors of the State Securities Corporation. I think I attended [414] six meetings. These were meetings held right after R. F. Marquis would have his annual report prepared of what happened in the previous year. One of these meetings may have been a directors' meeting. I never attended but one meeting that may have been called a directors' meeting. I mean I attended six meetings, all of which were directors' meetings. One of them might have been a stockholders' meeting. I think that was in 1936 or 1937.

#### Redirect Examination

The Witness: I had Government's Exhibit 57 in my possession from the time it was handed to me in 1930 until this date. No one ever asked me to sign a transfer blank on the back authorizing

(Testimony of L. Joe Hall.)

the transfer of the shares shown here, or for any portion of it. I never did sign it nor authorize anyone.

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### H. E. SIMMONS

was called as a witness in behalf of the Government, and having been heretofore duly sworn, testified as follows:

#### Direct Examination

The Witness: My name is H. E. Simmons. I live at Cave Creek, Arizona. I am a disabled veteran. I bought some bonds in the State Securities Corporation. The first one January 13, 1931 from Raymond F. Marquis in his office. I saw him a few days before I made the purchase in the office. I bought five bonds altogether. I think in 1931. I had two paid up bonds in full and made two payments on three bonds. I exchanged three of the bonds on which I had made two payments for stock. Mr. Harry Marquis came out to my place at Cave Creek and I talked to him about the last three bonds. I have seen Government's Exhibit 32 for identification before. All of these instruments came to me through the mail. They were all enclosed in this envelope.

Thereupon, counsel for plaintiff offered in evidence [415] Government's Exhibit 32 for identification, to which defendant Canning objected on

(Testimony of H. E. Simmons.)

the ground that no proper foundation had been laid, and for all of the reasons heretofore given on the objections to letters introduced under the other counts of the indictment, which objection was by the Court overruled, and to which ruling an exception was duly taken and entered in the record. Thereupon, the documents were received as Government's Exhibit 32 in evidence, which abstracted are as follows:

GOVERNMENT'S EXHIBIT No. 32

Being an envelope addressed to Mr. H. E. Simmons, Cave Creek, Arizona bearing the return on said envelope, State Securities Corporation, 210 Luhrs Tower, Phoenix, Arizona with the initials in pencil H. E. S., showing the cancellation stamp, Phoenix, Arizona, June 30, 1937, 2:00 P.M. and containing a copy of Dunne's Insurance Report on Union Reserve Life Insurance Company, Phoenix, Arizona, a copy of the annual report of Union Reserve Life Insurance Company as of December 31, 1936, and a mimeographed letter:

Union Reserve Life Insurance Company  
210 Luhrs Tower  
Phoenix, Arizona

June 22, 1937

Dear Friend, Patron:

In the due course of business, you were forwarded a copy of condensed annual report of

(Testimony of H. E. Simmons.)

the Union Reserve Life Insurance Company for the statutory year ending December 31, 1936. The report plainly set forth the progress of the company and reflected the detailed statement required to be filed with all state insurance departments by each of the legal reserve life insurance companies.

We are enclosing herewith Dunne's report, an unbiased and detailed analysis of our company, its progress and condition, for the last statutory year to which your attention is most respectfully invited. Dunne's report, as you know, being unbiased sets forth observations that may well be the subject of constructive criticism.

Since this company, because of its size and progress, must avail itself of every effort and judgment in furtherance of its present success, we would thank you to forward the names of any persons whom you might think would be interested in one of our superior policies. Your cooperation in this matter will be greatly appreciated.

Very truly yours,

R. F. MARQUIS

President.

RFM:H

Encl. [416]



(Testimony of H. E. Simmons.)

GOVERNMENT'S EXHIBIT No. 32

The Largest Policyholders Reporting Service  
In The World

London

New York

Rome

Chicago

Dunne's  
Insurance  
Report

Copyright, 1937, by Dunne's Insurance  
Reports, Incorporated,  
Louisville, Ky.

Union Reserve Life Insurance Company  
Phoenix, Arizona

REPORT

Published by The Insurance Index  
Established 1870

Total admitted assets December 31, 1936, were \$233,912.05, a gain for the year of \$40,698.00, and its resources have now reached the highest point in the history of the company. All of its resources have been invested in securities of high quality that are diversified and yield a good return. The liquid condition of the company is excellent.

Cash on hand and in banks amounted to \$12,472.86. The company owned stocks, State and county obligations of \$10,101.54. In our

(Testimony of H. E. Simmons.)

opinion the company is in a position to meet any contingency.

First mortgage loans on real estate amount to \$140,546.14. Mortgage loans have been well selected and are prime securities. These mortgage loans yield better than an average return. The loans have been made on a conservative basis, and in no instance exceed 50% of the true value of the property.

To its policyholders on the sole security of their policy contracts, the company has made loans of \$25,380.95. These loans are secured by the legal reserve, and in no instance exceed the cash value of the policy. While the loans are desirable as an investment for the company, yet, it very generously permits partial repayments of policy loans, and in order to have the policies unencumbered, we recommend that policyholders avail themselves of this opportunity of repaying their loans in installments, and thus increase their insurance protection and reduce interest.

Other ledger assets total \$44,795.27.

Interest and rents due and accrued amount to \$3,579.86. Net uncollected and deferred premiums aggregate \$22,767.49, and are secured by the legal reserve. [417]

Legal reserve maintained to mature its policy contracts, as they come due is calculated at

(Testimony of H. E. Simmons.)

\$105,822.43. The reserve basis is very strong.

No claims were due and unpaid at the end of the year, nor did the company have any that were incomplete or unreported. This would indicate that the company pays promptly and fairly all just claims, and is to be commended for its record in this respect.

There is a reserve of \$1,703.50 for coupons, etc., left with the company to accumulate at interest, and \$2,647.95 for premiums paid in advance. The company has a reserve of \$2,645.96 for claims payable in installments. Paid-up capital is \$100,900.00, and net surplus of \$20,192.21. Surplus as regards policyholders amounts to \$121,092.21, a large gain over the previous year, and in proportion to the amount of insurance at risk, this large surplus puts the company in a strong financial position.

Total income in 1936 amounted to \$130,366.70, an increase over the previous year of \$26,914.00. Of this total income, \$118,448.62 was from premiums. This is a very good record as to increase in income. During the year the company paid policyholders \$31,569.77, and in spite of these liberal and generous payments to policyholders, showed a surplus of income over total disbursements of \$21,238.00, and this was invested at interest for the benefit of policyholders in the future.

New paid-for life insurance in 1936 amounted to \$1,244,046.00, and was a satis-

(Testimony of H. E. Simmons.)

factory gain over the previous year. Paid-for insurance in force at the end of 1936 amounted to \$4,903,396.00, a gain over the previous year of \$542,746.00.

Actual to expected mortality was favorable again in 1936, and from this source the company gained \$26,004.79. Inasmuch as savings in mortality and excess interest earnings over legal reserve requirements are of prime importance in the operation of a life insurance company, we would say that the company was highly favored in both of these items. Gains from excess interest amounted to \$4,938.46. This would indicate that the company not only has excellent home office underwriting, but that it is using superior judgment in its investment program.

Organized April 28, 1928, the company began business July 21, 1928. Its present management, however, has been in charge of affairs since 1933. Its officers are men of long and successful experience in life insurance management. Several of them are widely and favorably known in life insurance circles. The company has confined its operation exclusively to Arizona.

Policy contracts are on standard forms and contain many liberal and attractive features. Actuarial methods are sound. Policies are written without restriction.

(Testimony of H. E. Simmons.)

President R. F. Marquis has dedicated his entire career to life insurance management. He is well and favorably known [418] and his previous experience well qualifies him to successfully direct the affairs of a company of this type. He has been engaged previously in all branches of the insurance business, including the field and home office management. For several years he was engaged in consulting actuarial work. Until the owners of the Northern States Life Insurance Company in Minneapolis decided to transfer their company, Mr. Marquis was its president. He was employed first as the company's actuary, was later made secretary, and then president. In that company he made an excellent record and was recognized as a conservative and able official. For nine years he was engaged with the Bankers Reserve Life of Omaha, and later became actuary and assistant general manager of the Western Union Life of Washington.

Other officers are: George Cornes, Vice-president and Secretary; E. G. Hamilton, Vice-President; H. S. Marquis, Treasurer.

Policyholders' rating January 1, 1937, A (Excellent). [419]

(Testimony of H. E. Simmons.)

The Union Reserve Life Insurance Company  
Phoenix, Arizona

Officers and Directors

Under whose guidance the results herein  
were accomplished:

Dr. N. C. Bledsoe,  
Physician and surgeon,  
Tucson, Arizona.

William C. Fields,  
Flannigan & Fields, Attorneys,  
Phoenix, Arizona.

R. F. Marquis, President,  
Union Reserve Life Insurance Co.,  
Phoenix, Arizona.

Dr. F. T. Hogeland,  
Chief Surgeon,  
Cananea Consolidated Copper Co.,  
Cananea, Mexico.

George H. Cornes, Vice-President,  
and Secretary,  
Union Reserve Life Insurance Co.,  
Phoenix, Arizona.

Walter E. Hawley,  
Hawley Bros. Assayers,  
Douglas, Arizona.

(Testimony of H. E. Simmons.)

L. J. Hall,

President Hall Tire Company,  
Tucson, Arizona.

George A. Dell,

Western Pinal Gin,  
Coolidge, Arizona.

H. S. Marquis, Treasurer,

Union Reserve Life Insurance Co.,  
Phoenix, Arizona.

Dr. J. M. Meason,

Physician and surgeon,  
Chandler, Arizona.

B. E. Leonard,

Supt. Machinery and Railway,  
Cananea Consolidated Copper Co.,  
Cananea, Mexico.

E. G. Hamilton, Vice-President,

Union Reserve Life Insurance Co.,  
Phoenix, Arizona.

Daniel Grant,

Former Pres. Yuma Fruit Growers Assn.,  
Yuma, Arizona.

Donal~~k~~ Fogg,

Retired,  
Tucson, Arizona.

(Testimony of H. E. Simmons.)

## ANNUAL REPORT

Union Reserve Life Insurance Company  
as of  
December 31, 1936

Phoenix, Arizona, March 2, 1937

Dear Patrons and Friends:

The year 1936 placed our country's general finances on an entirely new and advantageous plane. Unemployment is no longer the vexing problem that it was. Relief agencies have [420] been materially curtailed. Public confidence has greatly broadened in scope, and improved business conditions have replaced the fear and trepidity of past depression years.

Our company, by the concrete results obtained during 1936 and herein reported to you, finds itself in the forefront of this general progress. Pursuing an established custom, an independent certified public accountant was employed to audit the books and accounts of the company. The healthful, sound and progressive condition of our company is manifestly apparent from his certified audit. The audit was this year made by Earl Canning, C.P.A., Ellis Building, Phoenix, Arizona.



(Testimony of H. E. Simmons.)

ASSETS

Real Estate owned.....	none
53.2% of our assets are represented by first mortgage loans made on improved, income-bearing farms, city homes, and business property on which there was paid to the company and accrued on 12-31-36 interest in the sum of \$12,211.65. Only \$442.05 of our accrued interest was paid due .....	\$140,546.14
9.7% of our assets were loaned to policyholders on policies in force and secured by policy reserves.....	25,380.95
8.6% are held in U. S. Government Bonds, stocks, county, state, municipal and school district obligations, and cash items on hand and in the bank.....	22,574.50
16.9% are represented by bills receivable and agents' balances secured by deposit with the company of more than twice the amount in premium notes on policies in force .....	44,795.27
Furniture and fixtures—1.6%.....	4,234.56
Interest accrued 12-31-36 on securities owned—1.4% .....	3,579.86
Premiums due, deferred and in process of collection on policies in force and on which reserve is set up—8.6%.....	22,767.49
Total Assets .....	<hr/> \$263,878.77

(Testimony of H. E. Simmons.)

## LIABILITIES

Reserved for policies in force, \$121,134.42, less reserves on policies reinsured (net).....	\$105,822.43
Reserved for monies left with the company	1,703.50
Reserved for premiums paid in advance.....	2,647.95
Reserved for policy claims payable to bene- ficiaries in monthly incomes and install- ments .....	2,645.96
<hr/>	
Total Liabilities .....	\$112,819.84
Assets over and above reserves held as addi- tional protection to policyholders.....	151,058.93
<hr/>	
To Balance .....	\$263,878.77
	[421]
Policy reserves and all other lia- bilities .....	112,819.84
Assets not designated by statute as "Admitted Assets".....	29,966.72
	142,786.56
<hr/>	
Net Admitted Surplus to Policyholders.....	\$121,092.21
The company's total assets, as above .....	\$263,878.77
Total reserves and liabilities to policyholders .....	\$112,819.84

This gives us a policyholder's margin of \$2.33 of assets for each \$1.00 of our liability. Our assets are now more than double our liabilities to policyholders. The safety and soundness of our company's progress is manifestly plain to all.

The company holds thirty-six (36) first mortgage loans, properly appraised and averaging \$3,904.05 each. No such loan exceeds 8% of our assets.

(Testimony of H. E. Simmons.)

During 1936 applications were received for insurance totalling .....	\$1,636,546.00
Applications declined .....	\$75,000.00
Applications in process of issue	
12-31-36 .....	317,500.00      392,500.00

Life applications accepted, policies issued and in force.....	\$1,244,046.00
Total and permanent disability, double indemnity, additional coverage.....	\$ 286,000.00

Total Insurances Issued During 1936.....\$1,530,046.00

Total Insurances in Force Have Now Approached the \$6,000,000 Mark

The progress of each department may be briefly summarized in the following figures showing the factor of increase or decrease in the results of 1936 over those of 1935:

	1935	1936	% of Increase— 1936 over 1935
Premium income.....	\$ 94,136.87	\$ 118,448.62	26%
Earned interest.....	5,955.55	10,633.61	79%
Total income.....	103,452.79	130,366.70	26%
First mortgage loans.....	125,103.98	140,546.16	12%
Gross assets.....	244,379.13	263,878.77	8%
Admitted assets.....	193,214.22	233,912.05	21%
Reserves.....	83,327.27	121,134.42	45%
Net surplus to policyholders...	17,279.35	20,192.21	17%
Insurances in force.....	4,942,650.00	5,657,896.00	14%
New insurances written.....	1,285,752.00	1,530,046.00	19%
			[422]
Amount paid to policyholders	25,404.32	48,477.20	91%
			% of Decrease— 1936 under 1935
Past due interest.....	2,185.94	442.05	78%
Non-admitted assets.....	51,164.91	29,966.72	42%

(Testimony of H. E. Simmons.)

The growth of our company during the past three years is set forth in the following figures:

	1936	1933	Increase	%
Our net premium income on 12-31-36 was .....	\$118,448.62			
Out net premium income on 12-31-33 was .....		\$ 67,251.98		
Showing an increase of.....			\$ 51,196.64	76%
Amount paid to policyholders 1936	32,959.47			
Amount paid to policyholders 1933		16,548.78		
Showing an increase of.....			16,410.69	99%
Gross assets 12-31-36	263,878.77			
Gross assets 12/31/33 .....		174,401.68		
Showing an increase of.....			89,477.09	52%
Reserves 12/31-36.....	121,134.42			
Reserves 12-31-33.....		17,137.09		
Showing an increase of.....			103,997.33	606%

All death claims have been paid at once upon receipt of final proof of claim. An analysis of these claims presents some interesting data. Five claims resulted from acute and violent causes. One claim for \$2,500 and both *claim* of \$10,000 were in their third policy year.

(Testimony of H. E. Simmons.)

	Amount	Cause of Death
Claim No. 1	\$2,500	Acute appendicitis, and rupture
Claim No. 2	2,500	Murder
Claim No. 3	10,000	Ovarian tumor, malignant
Claim No. 4	2,000	Suicide
Claim No. 5	2,500	Acute appendicitis, and rupture
Claim No. 6	10,000	Heart involvement, following pneumonia

Total .....\$29,500.00

Reinsurance received,  
less costs of investigation..... 15,313.32

Net Loss A/C Claims.....\$14,186.68

[423]

This amount is but 35% of the claim expected and provided for, as shown by the American Experience Table of Mortality. Only 35c out of every \$1.00 collected for current mortality was required to pay all claims incurred during the year.

Our country's legal reserve life insurance companies constitute a bulwark of financial strength and resource. During the years of depression the institution as a whole returned in cash to policyholders more than \$18,000,000,000.00. This exceeds the total distributed by all our government's relief agencies.

Our company has well and truly performed its part in this beneficent trust. We approach 1937 fully confident that continued cooperation of loyal patrons of this company will make

(Testimony of H. E. Simmons.)

1937 a year of progress and continued financial growth. To this end, the management solely renews its pledge of purpose.

Respectfully submitted,

R. F. MARQUIS

President

The Union Reserve Life Insurance Company

[424]

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L. F. HAYMES

was called as a witness for the Government and having been heretofore duly sworn testified:

The Witness: My name is L. F. Haymes. I live at 537 West Palm Lane. I am a service station operator at 1821 West Van Buren. I bought two bonds of the State Securities Corporation and I do not remember from whom they were bought. I exchanged them for stock in March, 1931. I recognize the two instruments marked Government's Exhibit 60 for identification. I received them when I bought the bonds. I traded for stock just before they started writing insurance. I purchased the first stock from George Cornes at my place of business after I had traded my bonds for stock. He said I could get it at \$20.00 a share at that time. I saw Mr. Cornes quite frequently. I was dealing with George Cornes when I gave this check, Government's Exhibit 61 for identification at my place of business in June, 1937. He told me I could not

(Testimony of L. F. Haymes.)

afford to turn that down. There was 50 shares being turned back by a gentleman in the Southern part of the state and that he was taking half of it and for me to take the other half, that if I didn't want it the first of the year 1938, he would take it himself. I bought twenty-five shares at that time. This check was half payment for it. He said it was supposed to pay a cash dividend the first of January, 1938. That the directors wanted to pay a cash dividend the year before and he was sure there would be a cash dividend the first of the year. If I didn't want the stock then he would take it back. No stock was ever issued to me. I never received any dividends. Mr. Cornes gave me his note for the last twenty-five shares and took the stock back. I don't remember the date. It was after the companies went into the receivership. It was this year, 1940. I had a conversation with him when he bought this twenty-five shares back.

Thereupon, objection being made by defendant Canning [425] the evidence of the conversation between witness and Cornes was by the Court limited to only the defendant Cornes and the jury instructed that they should only consider it as against the defendant Cornes.

The Witness: The conversation took place at my place of business. He told me that he would take the stock back if I didn't want it. That he didn't have the money to pay for it but would give

(Testimony of L. F. Haymes.)

me a note. Nothing was said about this indictment. I have had other conversations with him. It was mentioned about me being a witness, not about the evidence. He mentioned making an appointment and having an attorney talk to me.

#### Cross Examination

The Witness: I never did talk to Mr. Wilson. I purchased two bonds in March, 1931. I took over another bond Mr. Brown had not paid for. The bonds were exchanged for stock. Mr. Cornes in June, 1937 sold me 25 shares and I paid one-half of the purchase price, or Two Hundred Fifty (\$250.00) Dollars, and executed a note for the balance. I had gotten acquainted with Mr. Cornes sometime before that. He told me he would make some purchases for me and the purchases could be applied on the \$250.00 note. I worked on R. F. Marquis' car and Harry Marquis' car at times.

[426]

He told me that if I didn't want it after the first year he would take it back. He said there would be a cash dividend. He didn't say stock bonus of five per cent. I bought the stock on his promise to take it back if I didn't want it. After the companies failed, I told Mr. Cornes that I expected him to reimburse me for the \$250.00 cash. He agreed that he would. He gave me a note for it. He explained that he had no money and I have his note for \$250.00. He has been paying small amounts.



HARRIET WALKER

was recalled and testified further as follows:

Thereupon a document was received as Government's Exhibit 62 for identification.

Redirect Examination

The Witness: I typed Government's Exhibit 62 for identification at the direction and dictation of Mr. Marquis and with the original letter made this carbon copy on or about the date it bears.

Thereupon Government's Exhibit 62 for identification was offered in evidence, to which the defendant Canning objected upon the same grounds as to Exhibit 40 and on the grounds that as to him it was immaterial, incompetent, hearsay and no proper foundation laid for introduction against the defendant Canning, which objection was by the court overruled and to which an exception was duly taken and entered in the record. Thereupon the document was received as Government's Exhibit 62 in evidence, which abstracted to the issue is: [427]

GOVERNMENT'S EXHIBIT No. 62

Mrs. May E. Bonar  
227 West Elm Street  
Compton, California

Dear Mrs. Bonar:

Under separate cover, I am enclosing copy of the Arizona Corporation law in regard to stock sales, which exempts from the necessity

(Testimony of Harriet Walker.)

of obtaining permit the sale of stock by a bona fide owner "where such sales are not made in repeated transactions." In other words, Mrs. Bonar, you have a perfect right to sell your stock if the sale is made in but one transaction, but if the certificate were divided up and sold out to various people in smaller lots, each sale after the first would be classified as a "repeated" sale and would require a permit from the Corporation Commission before any sales could be made.

It would be impossible at this time for me to tell you when the stockholders would order payment of a dividend. This happens to be one of the very few financial institutions in this section of the country that showed a profit for last year's operation. I would hesitate to say that it would be even good business, in the face of our present general condition, to run any risk of adverse conditions affecting our company by the payment of dividends before the general financial condition was settled sufficiently to make sure that such payment would not affect the future of our company.

In other words, Mrs. Bonar, while we made 10% upon our capital stock last year, it would not have been good business to have paid out the amount in dividends. Such action would have impeded the progress and greatly injured the company's future.

(Testimony of Harriet Walker.)

Since our holdings exceed those of any other stockholder, and since practically all my assets and savings of a lifetime are invested in this company, and furthermore, in view of the fact that the officers receive no salary whatever, I have a double incentive for paying dividends at the earliest possible moment. However, I do not hope the stockholders will order a dividend paid before such dividend can be paid without impairing our future progress, and the future earnings and stability of our company.

Thanking you for your letter, and assuring you of our desire to be of every possible assistance consistent with the good and solid progress of our company, I remain

Very truly yours,

R. F. MARQUIS,

Secretary-Treasurer

RFM:H

Encl. [428]

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At this time Mr. Flynn, counsel for the plaintiff, offered in evidence certain portions of the minutes contained in the book marked Government's Exhibit No. 26, to which offer the defendant Canning objected upon the grounds that as to him they were irrelevant, incompetent and immaterial, pure hearsay, no proper foundation had been laid, no proof offered by anybody that the minutes correctly relate what occurred at any of these meet-

(Testimony of Harriet Walker.)

ings and particularly the minutes of December 9, 1929, December 23, 1929, October 23, 1930, November 1, 1930, November 3, 1930, January 4, 1932, February 1, 1932, February 9, 1932, two separate minutes of February 14, 1933, minutes of March 18, 1933, March 28, 1933, March 30, 1933, October 16, 1933, October 16, 1933, February 9, 1934, February 13, 1934, May 7, 1934, February 12, 1935, February 11, 1939, September 5, 1936, February 9, 1937 and February 8, 1938, said objection to go to each of the minutes offered, which objection was by the court overruled and an exception duly taken and entered in the record. Whereupon said minutes comprising a part of Government's Exhibit No. 26 were marked received in evidence as follows:

December	9,	1929,	Government's Exhibit No. 26D	in evidence,
December	23,	1929,	Government's Exhibit No. 26E	in evidence,
October	23,	1930,	Government's Exhibit No. 26F	in evidence,
November	1,	1930,	Government's Exhibit No. 26G	in evidence,
November	3,	1930,	Government's Exhibit No. 26H	in evidence,
January	4,	1932,	Government's Exhibit No. 26I	in evidence,
February	1,	1932,	Government's Exhibit No. 26J	in evidence,
February	9,	1932,	Government's Exhibit No. 26K	in evidence,
February	14,	1933,	Government's Exhibit No. 26L and 26L1	in evidence,
March	18,	1933,	Government's Exhibit No. 26M	in evidence,
March	28,	1933,	Government's Exhibit No. 26N	in evidence,
March	30,	1933,	Government's Exhibit No. 26-O	in evidence,
October	16,	1933,	Government's Exhibit No. 26P	in evidence,
February	9,	1934,	Government's Exhibit No. 26Q	in evidence,
February	13,	1934,	Government's Exhibit No. 26R	in evidence,
May	7,	1934,	Government's Exhibit No. 26S	in evidence,
February	12,	1935,	Government's Exhibit No. 26T	in evidence,
February	11,	1936,	Government's Exhibit No. 26U	in evidence.

(Testimony of Harriet Walker.)

September 5, 1936, Government's Exhibit No. 26V in evidence,  
February 9, 1937, Government's Exhibit No. 26W in evidence,  
February 8, 1938, Government's Exhibit No. 26Y in evidence,

Which, when being abstracted to the issue, read as follows: [429]

#### GOVERNMENT'S EXHIBIT No. 26D

Being the minutes of the first meeting of board of directors of State Securities Corporation, Phoenix, Arizona, December 9, 1929, containing waiver of notice and consent to the holding of the first meeting of the board of directors at the general office of the corporation in Phoenix, Arizona, December 9, 1929 at at hour of eight o'clock P.M., signed by W. C. Ellis, R. J. Leavitt, R. F. Marquis, James H. Kerby, E. J. Flanigan and George H. Cornes. On motion made, seconded and carried, by-laws were adopted and the president and secretary authorized and directed to apply to the Corporation Commission of the State of Arizona to sell 2500 bonds of the face value of \$1,000 at maturity each. Secretary was authorized to procure a seal and the board authorized, ratified, approved and confirmed the allocation of 50,000 shares of the capital stock to the persons and in the amounts set forth in the Articles of Incorporation. The meeting adjourned. Signed W. C. Ellis, President, R. F. Marquis, Secretary, R. J. Leavitt, James H. Kerby, E. J. Flanigan, George H. Cornes.

(Testimony of Harriet Walker.)

GOVERNMENT'S EXHIBIT No. 26E

Being minutes of a special meeting of the board of directors of State Securities Corporation, dated December 23, 1929, reciting that proper notice had been given to each member, and that a meeting of the board of directors of the corporation was held at the company's temporary office at the City of Phoenix on December 23, 1929; minutes of previous meeting read and approved, and George H. Cornes elected vice-president of the corporation; H. S. Marquis made assistant secretary and assistant general manager of the corporation. The general manager outlined the methods employed and adopted in taking over the capital stock of Arizona State Holding Company and other corporations in exchange for stock of State Securities Corporation. All acts of the general manager ratified and adopted. Mr. Cornes, Mr. H. S. Marquis, Mr. Ellis, Mr. Kerby and Mr. R. F. Marquis were elected as executive committee of the company for the ensuing fiscal year with the power in any three constituting a quorum for the transaction of business with like powers as possessed by the full board of directors. Methods of repayment of advancement of funds to R. F. Marquis discussed and it was moved, seconded and carried that 5000 shares of the allocated unissued capital stock of the company be dedicated, set aside and held

(Testimony of Harriet Walker.)

for delivery to R. F. Marquis when and as permitted by the State Corporation Commission in repayment of all salaries, organization, expenditures, fees, licenses and outlay paid by him in preparation and organization of the company, and that the secretary be authorized and instructed to make request for the issuance to R. F. Marquis of the said 5000 shares of stock or any part thereof at any time he may deem a proper time to make the request. Meeting adjourned. Signed, E. J. Flanigan, Acting Secretary. [430]

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#### GOVERNMENT'S EXHIBIT No. 26F

Being a resolution adopted by Board of directors, State Securities Corporation October 23, 1930:

Resolved That the sale of 5,000 shares of the capital stock of State Securities Corporation be hereby authorized to be issued at such times, and in such manner as the Secretary may elect. The Secretary is hereby instructed and authorized to procure necessary permit from the Arizona Corporation Commission. In connection with this issue of stock the following agreement is entered into:

I, being a member of the Board of Directors of the State Securities Corporation of Phoenix, Arizona, join *will* all other members of said Board in authorizing a loan to the Treasury of

(Testimony of Harriet Walker.)

said State Securities Corporation of any pro-rated part of the remaining allocated and unissued shares of stock in said company as set out in the permit, for sale of stock issued by the Arizona Corporation Commission and as may be approved by said Arizona Corporation Commission for the purpose of sale, the proceeds of which shall be used under the supervision of the Arizona Corporation Commission to purchase real estate mortgages, bonds or other securities approved by said Corporation Commission to be used as capital surplus or reserves of the life insurance company now in process of organization.

This authorization is intended by each and every signatory as an irrevocable assistant in promoting the progress and advancing the date of organization of the Life Insurance Company. It is understood that the total stock so to be loaned shall not exceed 5000 shares, which amount shall be pro-rated amongst the signatories hereto.

Dated at Phoenix, Arizona,  
October 23rd, 1930.

R. C. ELLIS  
JAMES H. KERBY  
R. F. MARQUIS  
E. J. FLANIGAN  
H. S. MARQUIS  
GEORGE H. CORNES



(Testimony of Harriet Walker.)

GOVERNMENT'S EXHIBIT No. 26G

Being minutes of executive committee of the State Securities Corporation, November 1, 1930:

MINUTES OF MEETING OF EXECUTIVE  
COMMITTEE

of the

STATE SECURITIES CORPORATION

November 1, 1930

A meeting of the executive committee of the State Securities Corporation was held in the offices of the company on the 1st day of November, 1930, at the hour of 10:00 A.M.

All members were present.

It was announced that in order to increase the assets of the company so that the purposes for which the corporation was organized might be sooner consummated, that George H. [431] Cornes as trustee had offered and would execute to the corporation a promissory note in the amount of \$3,000.00, bearing interest at the rate of six per cent, which note would be secured by his mortgage as trustee upon real estate in Yuma County, Arizona, described as:

The north half of Farm Unit "Q", according to the Farm Unit Plat, in Section Six, Township Ten South, Range Twenty-three west, of the Gila and Salt

(Testimony of Harriet Walker.)

River Base and Meridian, according to the official plat of the survey of said land returned to the General Land Office by the Surveyor General, consisting of five acres, more or less;

upon the condition that such note and mortgage be used as an asset of the company and that same should be cancelled or the face value of said note returned to him when in the opinion of the executive committee such a return could be made without seriously impairing the assets of the company.

A motion was duly made, seconded and carried authorizing the acceptance of the offer of Mr. Cornes, outlined above, and that this company execute and deliver to Mr. Cornes a written instrument embodying the terms of the acceptance of such a note and mortgage.

No further business coming before the executive committee, the meeting adjourned.

R. F. MARQUIS

Secretary

(Testimony of Harriet Walker.)

GOVERNMENT'S EXHIBIT No. 26H  
MINUTES OF MEETING OF THE  
EXECUTIVE COMMITTEE  
of the  
STATE SECURITIES CORPORATION

November 3, 1930

A meeting of the executive committee of the State Securities Corporation was held in the offices of the company on the 3rd day of November, 1930, at the hour of 10:00 A.M.

A quorum being present, minutes of the previous meeting were read and approved.

Owing to the rush of business, both on the part of the company and on the part of our auditors, the monthly balance sheet was not compiled in time to be then forwarded. The committee, by unanimous resolution, determined to make the next statement promulgated as of November 30th.

Attention was called by the secretary to the fact that in the adjustment of the Kerby Investment Company stock, all of the stock *alloted* and presumed to be issued to J. H. Kerby had been consumed, together with a considerable amount of stock allocated, but not issued, as specified in permit issued by the State Corporation Commission under date of December 17, 1929. [432]

L. Jo Hall was duly designated as Assistant Secretary and Assistant Secretary of the com-

(Testimony of Harriet Walker.)

pany, subject to authority of the executive committee and approval by the Board of Directors.

Methods of repayment of monies expended in the pre-organization of the company, fees, expenditures, salaries, etc., paid out of private funds by R. F. Marquis, were discussed. It was moved that since none of the incorporators except Mr. Marquis had contributed toward the preparation, research, collection of data, fees, expenses, salaries, and outlays necessary in the organization of the company, 5000 of the allocated and unissued shares of the capital stock of the company be dedicated, set aside, and held for delivery to R. F. Marquis when and as permitted by the State Corporation Commission, in repayment of all salaries, organization, expenditures, fees, licenses, and outlay paid by him in preparation and organization of the company; and that the secretary be authorized and instructed to make request for the issuance to him of the said 5000 shares of the capital stock, or any part thereof, at any time or times he may deem a proper time to make such request. The motion was seconded and carried.

By resolution signed by all members of the Board of Directors, authority was procured from the State Department authorizing the

(Testimony of Harriet Walker.)

loan to the treasurer of the company of 5000 shares of the allocated and unissued capital stock, and permit secured for the sale of this stock, all as set forth in the foregoing resolution and the resolution of the Board, dated October 23, 1930.

The meeting adjourned.

R. F. MARQUIS

Secretary

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GOVERNMENT'S EXHIBIT No. 26I

Being minutes of meeting of executive committee, State Securities Corporation, January 4, 1932:

MINUTES OF MEETING OF THE  
EXECUTIVE COMMITTEE  
of the  
STATE SECURITIES CORPORATION

January 4, 1932

A meeting of the executive committee of the State Securities Corporation was held at the offices of the company on the 4th day of January, 1932.

A quorum being present, the minutes of the previous meeting were read and duly approved.

An application for real estate loan on assignment of mortgage, Joseph Bernor was duly approved.

(Testimony of Harriet Walker.)

The following resolution was then offered, namely: [433]

“Whereas, the financial depression now prevalent has greatly and seriously affected the financial status of many persons who have previous to this time subscribed for bonds of this company; and

Whereas, a great number of such subscribers now find themselves unable to comply with and/or complete subscription and payment contracted by them, greatly to the detriment and injury of this company; and

Whereas, losses occasioned and caused by the failure of numerous banks within our state has further added to the financial stringency surrounding subscribers to the bonds of this company, making the further continuance of payments on individual bonds impossible upon the part of many bondholders; and

Whereas, the company has received already many demands, letters, and surrendered bonds, together with pleas on the part of bondholders to be released from further obligations, averring that any attempt at forcible collection would result only in added financial loss to the subscribers; and

Whereas, the bringing of suits in collection against delinquent bondholders would create great enmity and injury at once to both bondholder and to the future progress of this company; and

(Testimony of Harriet Walker.)

Whereas, this company has at hand no means of complying with such numerous requests for relief, except at its financial loss and consequent injury to persistent and remaining bondholders; and

Whereas, George H. Cornes, and H. S. Marquis, on behalf of themselves and other persons, voluntarily offer to protect and satisfy each and all such delinquent bondholders against loss by taking an assignment of each such bond, and by setting aside and dedicating for future delivery to such bondholder, such parcels and portions of their personal interests in this company as would rightfully reimburse such bondholder to the full amount of his expenditure without loss to bondholder and without loss or cost of any nature to the company except and providing that the company will, upon receipt of a completed and duly signed "Instrument in Transfer", copy of which is hereto attached, release and surrender its prospective interests in or to any unpaid note, premium or other obligation made and/or incurred by the said bondholder in connection with his subscription, and that the company will, upon request regularly made on form, copy of which is hereto attached, transfer the surrendered bond to any person named and/or indicated in said instru-

(Testimony of Harriet Walker.)

ment upon the same terms of settlement as those upon which similar and like bonds were originally sold; and

Whereas, the acceptance of this offer would manifestly relieve the company from loss, obnoxious lawsuits and injury, and would in all respects be a great benefit to both the company and to the defaulting bondholder;

Now Therefore, Be It Resolved: That the proposal of the said George H. Cornes and H. S. Marquis and other [434] persons, as herein set forth, be and the same is hereby declared to be advantageous to this company, and that the said proposal be and the same is hereby approved and accepted, and the officers of the company empowered to carry out the terms hereof, adopting and endorsing any transaction in accordance herewith heretofore made."

Upon motion made, duly seconded, and carried, the resolution was adopted.

There being no further business to come before the committee, meeting was adjourned, upon motion duly made, seconded, and carried.

R. F. MARQUIS,

Secretary



(Testimony of Harriet Walker.)

GOVERNMENT'S EXHIBIT No. 26J

Minutes of meeting of executive committee of State Securities Corporation of February 1, 1932:

MINUTES OF MEETING OF EXECUTIVE COMMITTEE OF STATE SECURITIES CORPORATION.

A meeting of the executive committee of the State Securities Corporation was held in the offices of the company on the 1st day of February, 1932, at the hour of 10:00 A. M.

All members were present.

It was announced that in order to increase the assets of the company so that the purposes for which the corporation was organized might be sooner consummated, that R. F. Marquis as trustee had offered and would execute to the corporation a promissory note in the amount of \$17,500.00 bearing interest at the rate of six per cent, which note would be secured by his mortgage as trustee upon real estate in Yuma County, Arizona, described as:

Farm Units "N", "P", and the South Half of "Q", according to the Farm Unit Plat, all in Section Six, Township Ten South, Range Twenty Three West of the Gila and Salt River Base and Meridian, according to the official plat of the survey of said land returned to the General Land Office by the Surveyor

(Testimony of Harriet Walker.)

General consisting of 25 acres, more or less;

upon the condition that such note and mortgage be used as an asset of the company and that same should be cancelled or the face value of said note returned to him when in the opinion of the executive committee such a return could be made without seriously impairing the assets of the company.

A motion was duly made, seconded and carried authorizing the acceptance of the offer of Mr. Marquis above outlined and that this company execute and deliver to Mr. Marquis a written instrument embodying the terms of the acceptance of such a note and mortgage.

There being no further business the meeting adjourned.

GEO. H. CORNES

Acting Secretary [435]

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GOVERNMENT'S EXHIBIT NO. 26K

Minutes of meeting of board of directors of State Securities Corporation, February 9, 1932. The directors convened in regular meeting. A quorum was present. President Cornes presided. Minutes of previous meeting of board and executive committee were read, adopted

(Testimony of Harriet Walker.)

and approved. Stockholders in attendance were invited to attend the meeting. The program of the company was discussed and all transactions and acts of the officers throughout the past year analyzed and discussed in detail and by a motion made, seconded and carried, all the acts of the officers and committees during the past year endorsed, approved and adopted as the acts of the board of directors. The following persons were then elected officers of the company for the following year:

President George H. Cornes

Vice President H. S. Marquis

Secretary-Treasurer R. F. Marquis

Ass't Secretary-Treasurer L. Jo Hall.

George H. Cornes, H. S. Marquis and R. F. Marquis were elected members of the executive committee for the ensuing year with full authority to transact all business which could be transacted by the board of directors. The company's plans for the following year were outlined and the meeting adjourned.

R. F. MARQUIS,

Secretary.

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GOVERNMENT'S EXHIBIT NO. 26L

Minutes of meeting of stockholders of State Securities Corporation, Tuesday, February 14,

(Testimony of Harriet Walker.)

1933. Regular meeting of the stockholders of State Securities Corporation was held at the home office of the company February 14, 1933. W. C. Fields and H. S. Marquis were appointed a committee to examine and report on proxies. The committee reported all proxies to be in correct and proper form and entitled to be voted at the meeting. There was represented in person and by proxy shares approximating eighty-six per cent of the company's outstanding stock. The report of the committee on proxies was accepted and the committee discharged. Minutes of the previous meeting read and approved. Regular order of business was dispensed with and the report of the business of the past year was studied. It was brought out that the management had been very careful in handling the accounts of bondholders; that the officers had dedicated and allotted certain personal holdings to be given to defaulting bondholders whose bonds had no contractual value and who could not continue payments. It was shown that this was done without incurring any additional stock liability. Action of the committee on bond loans was endorsed. By motion made, seconded and carried, all acts of the officers and committees of the company were endorsed and adopted as acts of the company. A vote of thanks was extended to the management. The following persons were elected direc-

(Testimony of Harriet Walker.)

tors for the ensuing year: Daniel Grant, L. Jo Hall, Dr. N. C. Bledsoe, George H. Cornes, H. S. Marquis, George Young, Dr. F. T. Hoggeland, W. E. Hawley, Burt Leonard, R. F. Marquis, Dr. J. M. Meason, Don Fogg and W. C. Fields. The general outlook and plans for business for the coming year were discussed. The question of the purchase of Union [436] Reserve Life Insurance Company was discussed, and the question of readjustment of the affairs of the company before a license for the ensuing year could be obtained, and the advisability of purchasing a controlling interest in the company was discussed, and the following resolution was adopted:

“Resolved, that the proper officers of this company be authorized and empowered to enter into negotiations and to consummate the purchase by this company of a controlling interest in the Union Reserve Life Insurance Company, at a purchase price of not exceeding \$175.00 per share, and that in so purchasing said stock, said officers be empowered to use such assets of this company as may be necessary for that purpose.”

“Be it further resolved, that the Executive Committee of this corporation, namely: R. F. Marquis, H. S. Marquis, and George H. Cornes, be, and they are, hereby fully empowered to immediately cause to be investi-

(Testimony of Harriet Walker.)

gated said Union Reserve Life Insurance Company, and that they are further empowered to fully supervise, ratify and direct the acts of the officers of this company in the making, execution, and consummation of all contracts, payments, and instruments of any character necessary for the acquisition of any or all stock, assets, business or property of the said Union Reserve Life Insurance Company.”

“Be it further resolved, that said executive Committee is further specifically empowered to fully supervise and consummate the acquisition of any further or additional stock of the said Union Reserve Life Insurance Company that may be outstanding, and not included in the shares above referred to, under such terms and conditions as they may deem proper and expedient.”

“Be it further resolved, that the action of said officers or said Executive Committee in the matter aforementioned shall be the complete acts of this corporation.”

Meeting adjourned.

R. F. MARQUIS,

Secretary.

(Testimony of Harriet Walker.)

## GOVERNMENT'S EXHIBIT NO. 26L 1

Minutes of a meeting of the board of directors of State Securities Corporation, February 14, 1933, immediately following the meeting of the stockholders. The directors met in regular meeting at the company's office in Phoenix, Arizona, Tuesday, February 14, 1933. A quorum being present, minutes of the previous meetings were read and approved, and all stockholders present were invited to remain to the directors meeting. Complete outline of plans to acquire and operate a legal reserve life insurance company was discussed, and it was moved, seconded and carried that the plan be brought to maturity if in the opinion of the executive committee it would be advantageous to the company. Analysis of the acts and transactions of officers during the past year was made, and upon motion made, seconded and carried, all acts and transactions of officers were endorsed and approved as acts of the directors and company. A vote of thanks was given to the [437] management, and the following officers were elected:

President.....	George H. Cornes
Vice president .....	H. S. Marquis
Secretary-treasurer .....	R. F. Marquis
Assistant Secretary.....	Gertrude Conway
Assistant Treasurer.....	L. J. Hall

(Testimony of Harriet Walker.)

The following persons were elected as the executive committee for the ensuing year: George H. Cornes, H. S. Marquis and R. F. Marquis, and were fully authorized and empowered to do any act necessary or expedient to the conduct of the business, to loan and transfer money, execute notes, mortgages and other instruments of indebtedness, to release and assign in the name of the company and to do all other acts which the board of directors might do. No other business the meeting adjourned.

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GOVERNMENT'S EXHIBIT No. 26M  
MINUTES OF MEETING OF EXECUTIVE  
COMMITTEE OF THE STATE SE-  
CURITIES CORPORATION, March 18,  
1933.

A meeting of the executive committee of the State Securities Corporation was held in the offices of the company on the 18th day of March, 1933, at the hour of 10:00 A. M.

All members were present, namely:

George H. Cornes

R. F. Marquis

H. S. Marquis.

It was stated by Mr. R. F. Marquis that it would be highly beneficial to the company to



(Testimony of Harriet Walker.)

have additional assets for use in making payments and discharging obligations of the company under the terms of the option agreement purchased by the company from Lorenzo N. Stohl, dated April 25, 1932. It was suggested, that Mr. Cornes, as trustee, was possessed of the following described real estate, located in the County of Yuma, State of Arizona, as follows, to-wit:

Farm Unit "M", otherwise described as the northwest  $\frac{1}{4}$  of the northwest  $\frac{1}{4}$  of the southeast  $\frac{1}{4}$ , of Section 7, Township 10 South, Range 23 West; and

Farm Unit "N", otherwise described as the southwest  $\frac{1}{4}$  of the northwest  $\frac{1}{4}$  of the southeast  $\frac{1}{4}$  of said Section 7, Township 10 South, Range 23 West, Gila and Salt River Base and Meridian, in Yuma County, Arizona.

And that Kathleen Lucy Marquis was the owner of a certain \$1,000.00 Sinclair Crude bond of the present value of \$1,017.33. It was also stated that said Kathleen Lucy Marquis was willing [438] and had offered to assign and transfer to this company said bond for use in such manner as it desired, upon condition that the company would return said bond or its value in cash to said owner when in the judgment of this executive committee such a return

(Testimony of Harriet Walker.)

could be made by the company without seriously impairing its required assets. Also, it was reported that George H. Cornes, as trustee, was willing and had authority to execute and deliver to this company a real estate mortgage upon said real estate securing his note in the sum of \$12,000.00, payable to this company, to be used by this company, upon condition that said note and mortgage should be cancelled and returned to said George H. Cornes or its face value in cash, when in the judgment of this executive committee such a return could be made by the company without seriously impairing the assets of the company.

Upon motion duly made, seconded, and carried, it was determined to accept from Kathleen Lucy Marquis a \$1,000.00 Sinclair Crude bond of the present cash value of \$1,017.33, said bond to be used as an asset of this company and to be returned to said Kathleen Lucy Marquis or its cash value, when in the judgment of this committee such a return could be made without seriously impairing the assets of the company; also, that this company accept from George H. Cornes, as trustee, his note in the sum of \$12,000.00, secured by a real estate mortgage covering the following described property

Farm Unit "M", otherwise described as the northwest  $\frac{1}{4}$  of the northwest  $\frac{1}{4}$  of the

(Testimony of Harriet Walker.)

southeast  $\frac{1}{4}$  of Section 7, Township 10 South, Range 23 West; and

Farm Unit "N", otherwise described as the southwest  $\frac{1}{4}$  of the northwest  $\frac{1}{4}$  of the southeast  $\frac{1}{4}$  of said Section 7, Township 10 South, Range 23 West, Gila and Salt River Base and Meridian, in Yuma County, Arizona,

said note and mortgage to be returned to said George H. Cornes, as trustee, or the face value thereof in cash when such a return can be made by this company without seriously impairing its assets.

It was further moved, seconded, and carried that the president or vice president and secretary of this company execute and deliver to said George H. Cornes and said Kathleen Lucy Marquis a written instrument embodying the conditions of the acceptance of said bond, and note and mortgage.

H. S. MARQUIS

GEO. H. CORNES

R. F. MARQUIS

Members of Executive Committee.

[439]

(Testimony of Harriet Walker.)

GOVERNMENT'S EXHIBIT NO. 26N  
MINUTES OF MEETING OF EXECUTIVE  
COMMITTEE OF THE STATE SE-  
CURITIES CORPORATION, March 28,  
1933

A meeting of the executive committee of the State Securities Corporation was held at the offices of the company at Phoenix, Arizona, on the 28th day of March, 1933, the following members being present:

R. F. Marquis

H. S. Marquis

George H. Cornes.

The meeting was presided over by R. F. Marquis, who stated that the purpose of the meeting was to consider a proposal for the assignment by Lorenzo N. Stohl of a certain Option Agreement that was entered into on the 25th day of April, 1932, by and between M. E. Waddoups of Phoenix, Arizona, and Lorenzo N. Stohl. Whereupon the secretary read the said Option Agreement, which reads in the words and figures as follows:

“Option Agreement

This Option Agreement, made this 25th day of April, 1932, between M. E. Waddoups, hereinafter called the first party, and Lorenzo N. Stohl, hereinafter called the second party,

(Testimony of Harriet Walker.)

Witnesseth that:

Whereas, First National Life Insurance Company is a corporation, organized under the laws of the State of Arizona, having an issued and outstanding capital stock of 1009 shares, of the par value of \$100.00 each, and the first party herein is the owner of 823 of said shares; and

Whereas, it is the desire of the second party to buy said shares of stock at a consideration of \$150.00 per share, and the first party is willing to sell said shares at said price, and for the purpose of affording an opportunity to second party to purchase said shares for said price in installment payments this exclusive option is entered into;

Now, therefore, in consideration of the premises, and the sum of \$2,250.00 cash in hand paid, the receipt whereof is hereby acknowledged, and the covenants hereinafter contained, the first party does hereby give and grant to the second party the exclusive right, option and privilege of buying said 823 shares of capital stock as above described, provided, however, that the full price thereof shall be paid in full at the time and in the manner hereafter provided, namely:

\$7,000.00 within thirty (30) days from the date hereof, by making, executing and delivering to the first party a promissory note, pay-

(Testimony of Harriet Walker.)

able on or before ten (10) years, with interest at the rate of 6% per annum, duly signed by said second party and his wife, and secured by a real estate first mortgage covering the following described property, namely: [440]

Commencing at the southeast corner of Lot Four (4), Block Fifty-nine (59), Plat B, Salt Lake City Survey, running thence north 7 rods, thence west 4 rods, thence south 7 rods, thence east 4 rods to place of beginning, together with all appurtenances, all situated and located in Salt Lake County, Utah.

\$5,000.00, together with interest on all deferred payments at the rate of 6% per annum, on or before May 1, 1933;

\$5,100.00, together with interest on all deferred payments at the rate of 6% per annum, on the 1st day of May of each succeeding year thereafter, until the full balance, together with interest at the rate of 6% per annum on all deferred payments shall be paid in full.

The 823 shares above optioned shall be delivered as follows:

Fifteen (15) shares of the capital stock are to be delivered to the second party upon the delivering to the first party of the \$7,000.00 note and mortgage above described;

Thirty-four (34) shares of the capital stock, each and every year simultaneously with the

(Testimony of Harriet Walker.)

payment by the second party to the first party of \$5,100.00, together with interest on all deferred payments; upon the payment by the second party to the first party of the full amount of the purchase price provided herein, the balance of any shares optioned hereunder by the first party to the second party shall at said time be transferred and delivered by the first party to the second party.

It is further provided that the second party may at any time during the existence of this option pay in excess of the annual payments, provided for herein, on account of the principal, and for any such excess shall be entitled to receive from the first party such additional shares as the excess money paid by the second party to the first party may pay for at the rate of \$150.00 per share.

It is further understood and agreed that upon the delivery of the \$7,000.00 note and mortgage above described within the time provided herein, first party will during the life of this agreement vote his stock for a Board of Directors named by the second party herein, providing, second party furnishes, in writing, to the first party, thirty (30) days prior to any annual or special stockholders' meeting, names of directors that he desires to be elected, and it is further agreed that second party is to immediately be placed in the company as vice

(Testimony of Harriet Walker.)

president and general manager and to remain in such position at the pleasure of the Board of Directors.

As a further consideration for this option, the second party agrees at all times after February 1st, 1933, to maintain a surplus fund in the treasury of said company of not less than \$5,000.00, and that if for any reason the said surplus fund is depleted below said amount, and within ninety (90) days, the second party shall replace and maintain the surplus fund of said company. [441]

It is further understood and agreed, in consideration of the second party's maintaining the surplus of said company of not less than \$5,000.00 at all times after February 1st, 1933, the first party hereby agrees to contribute to the treasury of said life insurance company a sum equal to \$40.00 per share on account of each \$150.00 paid by the second party to the first party on account of the purchase price of said stock; the first party agrees to pay said \$40.00 from the proceeds, as and when paid by the second party to the first party; it being understood that the first party is making this donation for the mutual benefit of the parties hereto during the life of this agreement and in consideration of the second party's maintaining at all times the condition of the company so that there will be a surplus on hand of not less than \$5,000.00.



(Testimony of Harriet Walker.)

It is further understood and agreed that no stock shall be issued to the second party for the \$7,000.00 note and mortgage, and the first party agrees to donate said \$7,000.00 note and mortgage by assigning the same, without recourse, to the company for the use and benefit of the company; and also to pay into the treasury the \$2,250.00 in cash at the same time for the purpose of bettering the financial conditions of the company, and creating and assisting in the maintenance of the surplus, provided, however, that the said \$9,250.00 thus contributed shall be credited to the \$40.00 per share which the first party has undertaken to contribute from each \$150.00 paid by the second party to the first party, and shall be credited on account of and applied at the rate of \$40.00 per share on the last shares optioned hereunder, and no part of said \$9,250.00 shall be credited to or applied upon the net price of \$110.00 per share of any of the 823 shares covered by this option.

For the purpose of figuring the interest on deferred payments, it is understood and agreed that the deferred payments on account of the purchase price of said stock shall be figured at the rate of 6% per annum on \$110.00 per share on all shares that have not been paid for by the second party.

The stock optioned herein may at the election of the second party be escrowed with such

(Testimony of Harriet Walker.)

bank or trust company as may be mutually agreeable, conditioned that so long as the second party faithfully performs the covenants and conditions herein contained, said stock shall be so held during the life of this agreement; and further provided that upon the failure of the second party to comply with the terms and conditions of this agreement that the said stock shall be delivered to the first party herein, and all rights terminated hereunder as provided herein.

It is further understood and agreed that the first party will accept during the first two year period of this contract, and on account of payments made on the purchase price of the stock herein optioned, any securities now owned by the First National Life Insurance Company at the face value thereof, provided, however, that in the event the second party elects to withdraw securities held in the treasury of said company for the purpose of paying the first party, as herein provided, the first party does not undertake nor agree to refund to the company the sum of \$40.00 [442] on account of each share for the securities, but the first party does agree to accept said securities at their face value at the rate of \$110.00 per share, provided, however, that the second party shall pay into the treasury of the First National Life Insurance Company \$150.00 for each

(Testimony of Harriet Walker.)

\$110.00 security so withdrawn, and accepted by the first party.

It is further provided that in the event of the failure of the second party to pay in the manner and at the times provided herein any of the payments undertaken by said second party to be paid, or in the event of the failure of the second party to maintain the surplus as herein provided, this option may at the election of the first party be terminated and the \$7,000.00 note and mortgage above described, together with all moneys paid in connection therewith and all proceeds thereof shall be retained by the first party as liquidated damages, and first party to be immediately relieved of all further obligations by him undertaken herein.

This contract shall be binding upon the heirs, executors, administrators and assigns of the parties hereto.

Time is of the essence of this agreement.

In witness whereof, the parties hereto have subscribed their names the day and year first above written.

(Signed) M. E. WADDOUPS,  
First Party,

(Signed) LORENZO N. STOHL,  
Second Party.

Signed in the presence of:

(Signed) L. WEGSCHEIDER”

(Testimony of Harriet Walker.)

Whereupon, the secretary read the proposed assignment of said Option Agreement, which reads in the words and figures as follows:

“ASSIGNMENT OF OPTION  
AGREEMENT

Without recourse, and for the further consideration of the cancellation of a certain note, which reads in the words and figures as follows, to-wit:

‘Ten years after date, without grace, I, we, or either of us, promise to pay to the order of M. E. Waddoups, for value received, Seven Thousand and no/100 Dollars, payable at Phoenix, Arizona, without defalcation or discount, together with interest thereon at the rate of 6% per annum from date until maturity, and from maturing until paid before and after judgment at the rate of 10 per cent per annum. All interest payable annually.

If any installment of the interest be not paid promptly as stipulated, the legal holder of the note may declare the principal due and proceed by law to recover both principal and interest. If [443] this note is not paid at maturity, the undersigned agree to pay reasonable expense of collection, including attorney’s fee.

(Signed) VINNIE R. STOHL

(Signed) LORENZO N. STOHL’ ”

(Testimony of Harriet Walker.)

Also the release of a certain mortgage securing said note on said real estate situated in Salt Lake County in the State of Utah, more particularly described as follows:

“Commencing at the southeast corner of Lot Four (4), Block Fifty-nine (59), Plat “B”, Salt Lake City Survey, running thence north 7 rods, thence west 4 rods, thence south 7 rods, thence east 4 rods to place of beginning, together with all appurtenances.”

Which said mortgage is to be released simultaneously with the execution of this assignment and for the further consideration in the sum of One (\$1.00) Dollar, receipt of which is hereby acknowledged as having passed between the State Securities Corporation, an Arizona Corporation and Lorenzo N. Stohl.

“I, Lorenzo N. Stohl, do hereby sell, assign, transfer and set over unto the State Securities Corporation, an Arizona corporation, all my right, title, and interest in and to a certain Option Agreement entered into by and between M. E. Waddoups, of Phoenix, Arizona, first party, and Lorenzo N. Stohl, second party, said Option Agreement being dated April 25, 1932; copy of said Agreement being hereto attached and made a part hereof.

(Testimony of Harriet Walker.)

Dated this 28th day of March, 1933, at  
Phoenix, Arizona.

(Signed) LORENZO N. STOHL

(Signed) DAVID O. STOHL,

Witness”

“Above Assignment of Option Agreement is hereby accepted under the terms and provisions herein set forth.

Made and executed this 28th day of March, 1933, at Phoenix, Arizona.

STATE SECURITIES  
CORPORATION

(Signed) By GEORGE H. CORNES,

President

(Signed) By R. F. MARQUIS,

Secretary

Signed in the presence of:

.....,

Witness

.....,

Witness”

After due discussion, H. S. Marquis proposed that the State Securities Corporation purchase the interest of Lorenzo N. Stohl in said agreement for the consideration named, and that the company be authorized to purchase the above mentioned note and mortgage, being in the sum of \$7,000.00, dated at Phoenix, Ari-

(Testimony of Harriet Walker.)

zona, on the 15th day of April, 1932, from the Union Reserve Life Insurance Company, an Arizona corporation, and that the State Securities Corporation, an Arizona corporation, be and the same is hereby authorized to deliver said [444] note and mortgage, together with good and sufficient release thereof to Lorenzo N. Stohl, which said note was, on the 26th day of April, 1932, signed by M. E. Waddoups by the endorsement on said note as follows:

“Phoenix, Arizona  
April 26th, 1932

Without recourse, pay to the order of the First National Life Insurance Company.

(Signed) M. E. WADDOUPS”

And by further instrument of assignment, which reads in the words and figures as follows:

“ASSIGNMENT OF MORTGAGE

Know all men by these presents:

For value received, I hereby sell, assign and transfer to the First National Life Insurance Company, an Arizona Corporation, all of my right, title and interest in and to one certain promissory note dated at Phoenix, Arizona, on the 15th day of April, 1932, due ten (10) years from date, together with interest at the rate of six (6) per cent per annum, secured by a mortgage of the same

(Testimony of Harriet Walker.)

date on certain real property situated in Salt Lake City, Salt Lake County, State of Utah, and more particularly described as follows, to-wit:

‘Commencing at the southeast corner of Lot Four (4), Block Fifty-nine (59), Plat “B”, Salt Lake City Survey, running thence north 7 rods, thence west 4 rods, thence south 7 rods, thence east 4 rods to place of beginning, together with all appurtenances.’

In Witness whereof, the undersigned has hereunto set his hand and seal this 26th day of April, 1932.

(Signed) M. E. WADDOUPS”

State of Arizona,  
County of Maricopa—ss.

Before me, Charles H. Young, a Notary Public in and for the County of Maricopa, State of Arizona, on this day personally appeared M. E. Waddoups, known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that he executed the same for the purpose and consideration therein expressed.



(Testimony of Harriet Walker.)

Given under my hand and seal of office  
this 26th day of April, 1932.

(Signed) CHAS. H. YOUNG,  
Notary Public.

My commission expires July 28, 1933.”

[445]

Said Assignment was, on the 5th day of May, 1932, recorded in the office of the County Recorder of Salt Lake County, in Book C33, Page 241, Line 34.

It was announced that it would be advantageous to the company to have the certain note and mortgage in the principal sum of \$3,000.00, held by the company and executed by George H. Cornes, as trustee, cancelled and a new note and mortgage in the same amount accepted by the company.

It was moved, seconded and carried that this company be authorized to cancel the said note and mortgage dated November 1, 1930, executed by George H. Cornes as trustee in the principal sum of \$3,000.00, and that the company accept in lieu thereof a new note and mortgage in a like principal sum of \$3,000.00 and said mortgage to cover the identical property covered by said mortgage securing the note hereby authorized to be canceled.

It was then announced that it would be to the advantage of the company to have canceled

(Testimony of Harriet Walker.)

the certain promissory note executed by R. F. Marquis, as trustee, dated February 1, 1932, in the principal amount of \$17,500.00, and the mortgage securing same, and to accept in lieu thereof a new note in a like amount to be secured by a mortgage upon the property covered by the mortgage securing said note.

A motion was duly made, seconded and carried authorizing the company to cancel the certain note held by the company, dated February 1, 1932, in the principal sum of \$17,500.00, executed by R. F. Marquis, as trustee, together with the mortgage securing same, and to accept in lieu thereof a new note in a like amount, and to be secured by a mortgage upon the property covered by the mortgage so cancelled.

It was also moved, seconded and carried that the corporation deliver to said George H. Cornes and R. F. Marquis written instruments outlining the conditions upon which said new mortgages and notes are to be accepted by this company.

There being no further business, the meeting adjourned.

R. F. MARQUIS,

Secretary. [446]

(Testimony of Harriet Walker.)

GOVERNMENT'S EXHIBIT No. 26-O

MINUTES OF MEETING OF EXECUTIVE  
COMMITTEE OF THE STATE SE-  
CURITIES CORPORATION

March 30, 1933

A meeting of the Executive Committee of the State Securities Corporation was held in its offices in the Ellis Building, Phoenix, Arizona, on the 30th day of March, 1933, at the hour of 9:30 A. M.

All members of the committee were present, namely:

R. F. Marquis  
George H. Cornes  
H. S. Marquis

The matter of assigning to M. E. Waddoups a mortgage owned by the company, executed by Tomasita L. Lewis, securing her promissory note dated October 9, 1928, payable to the First National Life Insurance Company, a corporation, and the execution of a deed conveying to the said M. E. Waddoups certain property owned by the company, known as the Ralph Murphy property, was taken up.

After some discussion, it was moved, seconded, and unanimously carried that the proper officers of this company endorse and deliver said Tomasita L. Lewis note to M. E. Wad-

(Testimony of Harriet Walker.)

doups without recourse, and execute an assignment of the mortgage securing the payment of said note, and execute a deed, conveying to said M. E. Waddoups the Ralph Murray property described as Lots 94, 95, and 96, Ingleside Club Tract, subject to all taxes and assessments levied or to accrue against said property.

Since there was no further business to come before the meeting, the same adjourned.

R. F. MARQUIS,  
Secretary.

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GOVERNMENT'S EXHIBIT No. 26P  
MINUTES OF MEETING OF THE EXECUTIVE COMMITTEE OF THE STATE SECURITIES CORPORATION

October 16, 1933

A meeting of the Executive Committee of the State Securities Corporation was held in the offices of the company in the Ellis Building, at Phoenix, Arizona, on the 16th day of October, 1933, at the hour of 9:30 o'clock A. M.

All members were present.

It was called to the attention of the meeting that the mortgage and note executed by George H. Cornes, as Trustee, to this company, dated October 10th, 1933, in the principal amount of Twelve Thousand (\$12,000.00) Dollars, had

(Testimony of Harriet Walker.)

been [447] inadvertently recorded and that the company was not in need of such security at this time.

After some discussion, it was moved, seconded, and carried that the proper officers of this company execute a release of said note and mortgage and acknowledge same for the purpose of having same recorded in Yuma County, Arizona.

There being no further business, the meeting adjourned.

R. F. MARQUIS,

Secretary.

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GOVERNMENT'S EXHIBIT No. 26Q  
MINUTES OF MEETING OF EXECUTIVE  
COMMITTEE OF THE STATE SE-  
CURITIES CORPORATION

February 9, 1934

A meeting of the Executive Committee of the State Securities Corporation was held in the offices of the company in the Ellis Building, Phoenix, Arizona, on the 9th day of February, 1934, at the hour of 9:30 o'clock A. M.

All members of the committee were present.

It was called to the attention of the committee that securities and cash amounting to the sum of \$16,430.00 were in condition to be trans-

(Testimony of Harriet Walker.)

ferred to the Union Reserve Life Insurance Company, to be substituted for the note and mortgage held by the Union Reserve Life Insurance Company, in the amount of \$15,900.00, together with accrued interest thereon in the amount of \$530.00, which said note and mortgage are to be accepted by this company to be assigned to the Beneficial Investment Company as a payment in the amount of \$16,430.00 on the purchase price of stock of the First National Life Insurance Company, under the terms of the Option Agreement, dated April 25th, 1932, entered into between M. E. Waddoups, as seller, and Lorenzo M. Stohl, as purchaser, and assigned to this company by Lorenzo N. Stohl on the 28th day of March, 1933.

After some discussion, it was moved, seconded, and unanimously carried that the proper officers of this company assign and transfer to the Union Reserve Life Insurance Company said securities and cash in the amount of \$16,430.00, and that upon receipt of said Miller Cattle Company note and mortgage in the principal sum of \$15,900.00, that the proper officers of this company execute a proper assignment of said mortgage to the Beneficial Investment Company, and deliver to the Beneficial Investment Company said note, mortgage, and assignment, as a payment on the purchase price of the stock as provided in said Option Agree-

(Testimony of Harriet Walker.)

ment, in the amount of the principal sum of said note, together with accrued interest thereon at the date said note is delivered, as provided under the terms of the Option Agreement, dated April 25, 1932, between M. E. Waddoups and Lorenzo N. Stohl.

There being no further business, the meeting adjourned.

R. F. MARQUIS,

Secretary. [448]

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GOVERNMENT'S EXHIBIT No. 26R  
MINUTES OF MEETING OF BOARD OF  
DIRECTORS OF THE STATE SECUR-  
ITIES CORPORATION

February 13, 1934

A meeting of the Board of Directors of the State Securities Corporation was held at the offices of the company in Phoenix, Arizona, on Tuesday, February 13th, 1934.

The meeting was called to order by the president. The secretary announced that some of the directors were compelled to leave before the meeting of directors was convened; hence, a quorum was not present, whereupon the following motion was made:

“Moved, that since there is not a quorum present, this meeting be adjourned in accord-

(Testimony of Harriet Walker.)

ance with the provisions of the By-Laws of the corporation, until the second Tuesday of February, 1935.

The motion was duly seconded and carried.

R. F. MARQUIS,

Secretary.

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GOVERNMENT'S EXHIBIT No. 26S  
MINUTES OF MEETING OF THE EXECUTIVE COMMITTEE OF THE STATE SECURITIES CORPORATION

May 7, 1934

A meeting of the executive committee of the State Securities Corporation was held at the offices of the company in Phoenix, Arizona, on the 7th day of May, 1934.

All members were present, and the minutes of the previous meeting were read and approved.

The secretary reported that the Option Agreement having been retired, it was quite necessary to build up the surplus of the life insurance company, and that he had received from H. S. Marquis an offer to turn over as a loan to the State Securities Corporation the proceeds from the sale of certain stock which the partnership of Marquis, Cornes and Marquis owned and were willing to sell or have sold for the ultimate purpose of replenishing the surplus of the



(Testimony of Harriet Walker.)

Union Reserve Life. The stock so sold and proceeds so turned over or loaned to be returned to said Marquis, Cornes and Marquis when, in the judgment of the board of directors or the executive committee, such restitution can be made without impairing the progress and the ability of the Union Reserve Life to carry out its insurance contracts with its insureds.

It was moved that the offer of Mr. Marquis be accepted [449] subject to all named conditions. The motion was seconded, and carried.

The meeting adjourned in regular manner.

R. F. MARQUIS,

Secretary.

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GOVERNMENT'S EXHIBIT No. 26T  
MINUTES OF MEETING OF THE BOARD  
OF DIRECTORS OF THE STATE SE-  
CURITIES CORPORATION

February 12, 1935

A meeting of the Board of Directors of the State Securities Corporation was held at the offices of the company in Phoenix, Arizona, on Tuesday, February 12th, 1935, at 1:30 o'clock P. M.

The meeting was duly called to order.

The secretary announced the presence of six members of the Board, and that this number

(Testimony of Harriet Walker.)

was not sufficient to constitute a quorum, as provided by the By-Laws of the corporation, whereupon the meeting was regularly adjourned until the date of the next regular meeting of the directors, February 11, 1936.

R. F. MARQUIS,

Secretary.

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GOVERNMENT'S EXHIBIT No. 26U  
MINUTES OF MEETING OF STOCK-  
HOLDERS OF STATE SECURITIES  
CORPORATION

February 11, 1936

The annual meeting of the stockholders of the State Securities Corporation was held at the offices of the company on Tuesday, February 11th, 1936, at the home office of the company, 210 Luhrs Tower, Phoenix, Arizona, at 10:00 A. M. The meeting was called to order by the president. The secretary informed the meeting that there appeared to be a quorum present, either in person or by proxy. Mr. Fields and Mr. Cornes were appointed a committee to examine and report on the validity of proxies. The committee retired, during which time an informal general discussion of the progress of the company during 1935 was engaged in.

(Testimony of Harriet Walker.)

Some interesting data was given to all stockholders present. Our company had required but eight per cent of its mortality collections to pay all actual incurred death claims. The interest income of the company was sufficient to pay all death claims, all major running expenses except first year commissions. The total resources of the company were increased twenty-eight per cent over the previous year, [450] and the item of admitted assets was increased twenty-three per cent over the previous year. Reserves likewise were increased ninety-three per cent over the previous total and mortality savings increased ninety-two per cent, while total disbursements were decreased sixteen per cent. All death claims had been paid at once upon receipt of final proof and living policyholders had been paid more than five times the amount paid in death claims.

The committee on proxies reported as follows:

“Your committee having carefully examined all proxies submitted, finds each to be in due and proper form and entitled to vote at this meeting of stockholders of the State Securities Corporation.”

It was then moved and seconded that the committee's report be accepted and approved, and the committee discharged. The motion carried.

(Testimony of Harriet Walker.)

The secretary then announced that over eighty-seven per cent of all outstanding shares were represented in person or by proxy, whereupon the president directed the meeting to proceed in regular order.

Minutes of previous meeting were read and adopted. The secretary then announced that the holders of proxies had expressed a wish to vote such proxies in accordance with the wishes of a majority of the stockholders present.

The stockholders then read and examined in detail all acts and transactions of the officers and the executive committee of the company. All records were examined, and these were supplemented by oral comment from many stockholders present. All items of disbursement were evidenced by proper voucher. After a discussion in detail of the condition of the company and of the Union Reserve Life Insurance Company, the following resolution was offered:

“Resolved, that the transactions and acts performed by each officer and by the executive committee of the company be hereby approved, endorsed, and adopted as the act or acts of the company.”

Upon motion duly made, seconded, and carried, the resolution was unanimously adopted.

It was then moved that the meeting proceed to the election of directors for the ensuing year,

(Testimony of Harriet Walker.)

and the motion was seconded and carried. The following names were placed in nomination:

Dr. N. C. Bledsoe

Dr. F. T. Hogeland

L. Jo Hall

R. F. Marquis

Geo. H. Cornes

W. E. Hawley

H. S. Marquis

Geo. A. Dell

Daniel Grant

Don E. Fogg

Burt Leonard

E. G. Hamilton

Further nominations were closed, upon motion made, seconded and carried. Motion was then made and seconded, instructing the secretary to cast the unanimous vote of the stock represented at the meeting for each one of the foregoing nominees. [451] The chair then announced that each of the foregoing nominees had been and was elected a director of the corporation for the ensuing year.

The meeting then entered into a further detailed discussion of the report of the Union Reserve Life Insurance Company and all other affairs of the corporation that appeared to be of interest to the stockholders. Both the president and secretary gave oral views on matters

(Testimony of Harriet Walker.)

discussed, and answered to the satisfaction of every person present all questions asked by stockholders as to the affairs of the company, its acts and operation, and the performances and acts of its officers and committees during the past year, after which the following resolution was offered:

“Resolved, that the officers and the various committees be tendered a vote of thanks for the manner in which they have each looked after the interests and affairs of the company and the interests of all stockholders, and for the unbiased manner of handling the few disgruntled and dissatisfied stockholders who were influenced by the false, malicious and untrue statements of irresponsible and unscrupulous agents of competing companies.”

It was moved that the foregoing resolution be adopted. The motion was seconded and carried by unanimous vote.

It was moved and seconded that R. F. Marquis be designated and that he be given full power and authority to vote in behalf of this corporation any and all stock of the Union Reserve Life Insurance Company owned and standing in the name of the State Securities Corporation at any meeting of the said Union Reserve Life Insurance Company, either at any regular meeting, any adjourned meeting, or any

(Testimony of Harriet Walker.)

special meeting thereof, with full authority and power to do and perform in behalf and in the name of this corporation any act or duty to which this corporation may be entitled, by virtue of such stock ownership. The motion was carried without a dissenting vote.

It was then moved, seconded and carried that E. G. Hamilton, H. S. Marquis, G. H. Cornes, and R. F. Marquis constitute the executive committee for the ensuing year, with full powers and authority to do any act that could be done by the board of directors, and to act in behalf of said board when the board is not in session.

There being no further business to come before the meeting, after a distribution of the president's report to every person present, upon motion made, seconded, and carried, the meeting adjourned.

R. F. MARQUIS,

Secretary. [452]

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GOVERNMENT'S EXHIBIT No. 26V  
MINUTES OF MEETING OF EXECUTIVE  
COMMITTEE OF THE STATE SE-  
CURITIES CORPORATION

September 5, 1936

A meeting of the Executive Committee of the State Securities Corporation was held at the

(Testimony of Harriet Walker.)

offices of the company in Phoenix, Arizona, on Saturday, September 5th, 1936, all members being present. Minutes of the previous meeting were read and approved.

The settlement of the Earl Bales suicide claim was inquired into. Mr. Fields, attorney and a director of the company, was invited into the meeting. After a statement of all steps taken in the premises was heard, and all papers examined, Mr. Fields asserted that the officers of the company had, in effecting a compromise, made a settlement most advantageous to the company. In fact, he was quite astonished that such settlement could have been made, at the same time holding the friendliness of the family of the deceased, which family he understood carried several policies with the company.

The offer of R. F. Marquis, Trustee, and Geo. H. Cornes, Trustee, to execute and deliver certain mortgages under conditions set out in letter dated August 7th, 1936, was read. Upon motion duly made, seconded and carried, the said notes and mortgages were accepted in accordance with the terms of said letter of August 7th, 1936, copy of which is hereto attached, and which shall govern the status of said donors or mortgagors in their relation to the State Securities Corporation, and each of said notes and mortgages is accepted upon the distinct



(Testimony of Harriet Walker.)

agreement set out in said attached copy of letter of August 7th, 1936.

The following motion was made, seconded and carried:

“Moved, that the State Securities Corporation, to further the interests of the Union Reserve Life Insurance Company, execute and assign to the Union Reserve Life Insurance Company notes and mortgages, under the same terms and conditions as were executed original notes and mortgages, as follows:

1. R. F. Marquis, Trustee, to State Securities Corporation, in the sum of \$21,500.00.

2. George H. Cornes, Trustee, to State Securities Corporation, in the sum of \$4,500.00.

3. George H. Cornes, Trustee, to State Securities Corporation, in the sum of \$17,500.00.

After discussion and approval of all acts done, the agency staff was invited into the meeting and for fully two hours a round-table discussion was engaged in. Many new angles of salesmanship were brought out and the meeting was [453] held by all to have been most profitable and enlightening.

Upon motion made, seconded and carried, meeting adjourned.

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Secretary.

(Testimony of Harriet Walker.)

(Letter attached)

Copy                      Copy                      Copy  
State Securities Corporation  
Phoenix, Arizona

Suite 210 Luhrs Tower

August 7, 1936

Union Reserve Life Insurance Company  
210 Luhrs Tower  
Phoenix, Arizona

Gentlemen:

The State Securities Corporation, through its Executive Committee, informs you of its desire to further the interests of itself and of the Union Reserve Life Insurance Company by executing and assigning to the Union Reserve Life Insurance Company, notes and mortgages, as follows:

1. Note executed by R. F. Marquis, Trustee, in the sum of \$21,500.00, and secured by first mortgage upon:

Farm Unites N, P, and the south half of Q, according to the Farm Unit Plat, all in Section Six (6), Township Ten (10) South, Range Twenty-three (23) West of the Gila and Salt River Base and Meridian, according to the official plat of the survey of said land returned to the General Land Office by the Surveyor General, consisting of twenty-five (25) acres, more or less.

(Testimony of Harriet Walker.)

2. Note executed by George H. Cornes, Trustee, in the sum of \$4,500.00, and secured by first mortgage upon:

The north half of Farm Unit Q, according to the Farm Unit Plat, in Section Six (6), Township Ten (10) South, Range Twenty-three (23) West of the Gila and Salt River Base and Meridian, according to the official plat of the Survey of said land returned to the General Land Office by the Surveyor General, consisting of five (5) acres, more or less.

3. Note executed by George H. Cornes, Trustee, in the sum of \$17,500.00, and secured by first mortgage upon: [454]

Farm Unit M, otherwise described as the Northwest quarter (NW $\frac{1}{4}$ ) of the Northwest quarter (NW $\frac{1}{4}$ ) of the Southeast quarter (SE $\frac{1}{4}$ ) of Section Seven (7), Township Ten (10) South, Range Twenty-three (23) West, Gila and Salt River Base and Meridian, in Yuma County, Arizona.

It is planned that the foregoing notes and mortgages would be assigned and set over to the Union Reserve Life Insurance Company at such time as the Union Reserve Life Insurance Company shall execute assignment to the State Securities Corporation of note and mortgages previously made so that proper satisfaction

(Testimony of Harriet Walker.)

and release may be executed by this corporation to the makers of said notes and mortgages, as follows:

1. R. F. Marquis, Trustee, to State Securities Corporation, in the sum of \$17,500.00, recorded in Book 42 of Mortgages, at Page 201, office of County Recorder of Yuma County, March 30, 1933.

2. George H. Cornes, Trustee, to State Securities Corporation, in the sum of \$3,000.00, recorded in Book 42 of Mortgages, at Page 204, Office of County Recorder of Yuma County, April 3, 1933.

3. George H. Cornes, Trustee, to State Securities Corporation, in the sum of \$12,000.00, recorded in Book 42, of Mortgages, at Page 281, office of County Recorder of Yuma County, February 28, 1935.

This will complete the satisfaction and termination of the above-named mortgages now current, and the putting in force, as first liens, of the mortgages herein described and tendered.

It is understood and this proposal is made upon the condition that such mortgages herein tendered be accepted for the purpose of providing additional assets and that each of such notes and mortgages be used for that purpose, and that the State Securities Corporation shall receive back each of the said notes and mortgages when, in the opinion of the Executive Committee of the Union Reserve Life Insur-

(Testimony of Harriet Walker.)

ance Company, any such mortgage can be returned without reducing the assets of the company below an amount required by law, or when other securities or assets are substituted in lieu thereof.

Very truly yours,

STATE SECURITIES  
CORPORATION,

By GEORGE H. CORNES,

RFM:H

President. [455]

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GOVERNMENT'S EXHIBIT No. 26W  
MINUTES OF MEETING OF STOCK-  
HOLDERS OF THE STATE SECURI-  
TIES CORPORATION

February 9, 1937

The annual meeting of the stockholders of the State Securities Corporation was held at the offices of the company, 210 Luhrs Tower, on Tuesday, February 9, 1937, at 10:00 A. M.

The meeting was called to order by the president. The secretary informed the meeting that there appeared to be a quorum present in person or by proxy. The chair appointed Mr. Fields and Mr. Hamilton a committee to determine the validity of proxies. The committee retired, during which an informal general discussion of the company's affairs and progress was engaged in.

(Testimony of Harriet Walker.)

All stockholders present were shown through the office; the manner and systems of accounting were explained and demonstrated, at the conclusion of which the committee on proxies signified its readiness to report.

The committee then submitted the following:

“We, the committee on proxies, having examined all proxies submitted, find each and every proxy to be in due and proper form and entitled to vote at this meeting of the stockholders of the State Securities Corporation.”

It was then moved that the committee's report be accepted and approved and the committee discharged. The motion was seconded and carried.

The secretary then read a statement certifying that there were represented at the then present meeting, either in person or by proxy, over ninety per cent (90%) of all outstanding shares of stock, whereupon the president directed the meeting to proceed in regular order.

Minutes of previous meetings of stockholders, executive committee, etc., were read and, upon motion duly made, seconded and carried, were approved and adopted as read.

The secretary then announced that the holders of proxies had expressed a desire to vote such proxies in accordance with the wishes of a majority of the stockholders present.

(Testimony of Harriet Walker.)

The transactions of the officers and committees during the past year were detailed, read and laid before the meeting, and these were supplemented by oral comment. All items of disbursements were evidenced by proper voucher. After a full discussion, the following resolution was offered:

“Resolved, that the transactions and acts performed by each officer and by the executive committee of the company be hereby approved, endorsed and adopted as the acts of the company.” [456]

Upon motion duly made, seconded and carried, the resolution was unanimously adopted.

It was then moved that the meeting move on to the election of directors for the ensuing year. The motion was duly seconded and carried. The following names were placed in nomination:

Dr. N. C. Bledsoe

Dr. F. T. Hogeland

L. Jo Hall

R. F. Marquis

G. H. Cornes

W. E. Hawley

H. W. Marquis

G. A. Dell

Daniel Grant

D. E. Fogg

B. E. Leonard

E. G. Hamilton

(Testimony of Harriet Walker.)

It was moved, seconded and carried that nominations be closed. A motion was then made and seconded that the rules be dispensed with, and that the secretary be instructed to cast the unanimous vote of the stock represented at the meeting for each one of the foregoing nominees. The motion was carried. The secretary then announced that the unanimous vote had been cast for each of the names proposed for election to the board of directors, all as set out in the motion of instruction so to do, whereupon the chairman *announced* the due election of each person named to membership on the board of directors for the ensuing year.

The meeting then entered into an informal discussion of matters of general interest to all stockholders. Oral views were expressed and discussed to the expressed satisfaction of all stockholders present. The following resolution was then presented:

“Resolved, that the unbiased manner of handling the few disgruntled and dissatisfied stockholders, who had been influenced by malicious and damaging statements of irresponsible or self-invited and self-interested persons and agents of competing companies, be commended and each member thanked for his work in behalf of the company’s welfare.”



(Testimony of Harriet Walker.)

Motion was duly made, seconded and carried that the resolution be adopted.

It was then moved and seconded that R. F. Marquis be designated with power of attorney and that he be given full power and authority to vote in behalf of this corporation any and all stock of the Union Reserve Life Insurance Company owned and standing in the name of the State Securities Corporation at any meeting of the said Union Reserve Life Insurance Company, at either any regular meeting, any adjourned meeting, or any special meeting thereof, with full authority and power to do and perform in behalf of and in the name of this corporation any act or duty to which this corporation may be entitled by virtue of such stock ownership. The motion was carried without a dissenting vote.

It was then moved, seconded and carried that E. G. Hamilton, R. F. Marquis, G. H. Cornes and H. S. Marquis be designated to constitute the executive committee for the ensuing year, and that the said executive committee be given full power and authority to do any act or to perform any act or duty that could be done by the board of directors when the [457] said board is not in session.

There being no further business to come before the meeting, the meeting adjourned,

(Testimony of Harriet Walker.)

upon motion duly made, seconded and carried.

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Secretary.

GOVERNMENT'S EXHIBIT No. 26Y  
MINUTES OF MEETING OF STOCK-  
HOLDERS OF THE STATE SECURI-  
TIES CORPORATION

February 8, 1938

The annual meeting of the stockholders of the State Securities Corporation was held at the offices of the company, 210 Luhrs Tower, on Tuesday, February 8th, 1938, at 10:00 A. M. The meeting was called to order by President Cornes, and upon inquiry from the president, the secretary informed the meeting that there appeared to be a quorum present in person or by proxy, whereupon the chairman designated W. C. Fields and E. G. Hamilton a committee to examine, determine the validity of and check the proxies that were presented at the meeting. The committee retired, during which an informal general discussion of the company's affairs and progress was engaged in by all present, at the conclusion of which the committee on proxies signified its readiness to report. The committee then submitted the following report:

“We, your committee on proxies, having

(Testimony of Harriet Walker.)

examined all proxies submitted, find each and every proxy to be in due and proper form and entitled to vote at this meeting of the stockholders of the State Securities Corporation.”

Upon motion made, seconded and carried, the report of the committee on proxies was accepted and the committee discharged.

The secretary then announced that a poll count showed there were represented in person at the meeting 24,553 shares of stock, and that 10,759 shares were represented by proxy. The total number of shares present approximated 78% of all outstanding shares. The chair then directed the meeting to proceed in regular order. Minutes of previous meetings of stockholders, executive committees, were read and, upon motion duly made, seconded and carried, were duly approved as read.

The secretary then announced that the holders of proxies had expressed a desire to vote respective proxies held in accordance with the wishes of a majority of stockholders present.

The transactions and performances of the officers and committees during the past year were detailed, read and laid before the meeting, being supplemented by oral comment. All [458] items of disbursement were evidenced by proper voucher. After a full discussion, the following resolution was offered:

(Testimony of Harriet Walker.)

“Resolved, that the transactions and acts performed by each officer and by the executive committee of the company be and are hereby approved, endorsed and adopted as the acts of the company.”

Motion was made to adopt the resolution just offered. Motion was seconded, carried.

Mr. Hamilton then moved that rules be suspended and that the meeting elect a board of directors for the ensuing year. Motion was seconded and carried.

The chair then called for nominations to the board of directors. The following names were proposed:

Dr. N. C. Bledsoe  
Dr. F. T. Hogeland  
L. Jo Hall  
R. F. Marquis  
G. H. Cornes  
W. E. Hawley  
H. S. Marquis  
Daniel Grant  
B. E. Leonard  
E. G. Hamilton

It was then moved and seconded that nominations cease. The motion carried. A motion was then made that the rules be suspended and that the secretary be instructed to cast the unanimous vote of the stock represented at the meet-

(Testimony of Harriet Walker.)

ing for each one of the foregoing nominees. The motion was duly seconded and carried.

The secretary then announced that the unanimous ballot had been cast for each of the aforesaid nominees, whereupon the chair announced that each of the nominees was the duly elected member of the board of directors of the corporation for the ensuing year.

The chair then called for the next order of business. The secretary submitted to each stockholder present a detailed statement made by Earl Canning, Certified Public Accountant, compiled as of June 30th, 1937, showing in detail the expenditures and affairs of the corporation.

This statement was carefully analyzed, item by item, by the secretary. Each person present expressed satisfaction and made comment upon the completeness of the statement and its plain, understandable items. At the conclusion of the secretary's analysis, the following resolution was offered:

“Resolved, that the unbiased and able manner in which the several officers and committees have handled the affairs of the company, and the straightforward manner in which they have performed acts and deeds in pursuing the company's business, deserves the thanks of all stockholders, and that due recognition be recorded in these minutes, and

(Testimony of Harriet Walker.)

that all acts of committees and of officers, and all disbursements, and all performances of such officers and committees done during the year past and up to the date of this meeting be and the same are hereby approved, endorsed and adopted as the acts of the company.”

Upon motion duly made, seconded and carried, the foregoing [459] resolution was adopted.

It was then moved and seconded that R. F. Marquis be designated with power of attorney and that he be given full power and authority to vote in behalf of this corporation any and all stock of the Union Reserve Life Insurance Company owned and standing in the name of the State Securities Corporation at any meeting of the said Union Reserve Life Insurance Company, at either any regular meeting, any adjourned meeting, or any special meeting thereof, with full authority and power to do and perform in behalf of and in the name of this corporation any act or duty to which this corporation may be entitled by virtue of such stock ownership. The motion was carried without a dissenting vote.

It was then moved, seconded and carried that E. G. Hamilton, R. F. Marquis, G. H. Cornes and H. S. Marquis be designated to constitute

(Testimony of Harriet Walker.)

the executive committee for the ensuing year, and that the said executive committee be given full power and authority to do any act or to perform any act or duty that could be done by the board of directors when the said board is not in session.

There being no further business to come before the meeting, the meeting adjourned, upon motion duly made, seconded and carried.

.....  
Secretary. [460]

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E. P. HAIR

was called as a witness on behalf of the Government, and having been heretofore duly sworn, testified as follows:

Direct Examination

The Witness: My name is E. P. Hair. I am an accountant and special agent of the Federal Bureau of Investigation. I have been since September, 1930. I have been engaged in making accounting investigations. I went to Benjamin Franklin University in Washington, D. C. and received a degree of Bachelor of Commercial Science in 1929. I worked there about nine months in the accounting division of the Department of State at Washington and for about six months on the accounting staff of Haskin and Sells in Baltimore, Maryland

(Testimony of E. P. Hair.)

who are certified public accountants. I have done work in connection with bankruptcy cases, made investigation of various concerns including furniture dealers, hardware and electrical supply dealers, mail fraud cases, brokerage concerns, chain grocery stores, anti trust investigations and oil companies. I have had two cases involving mail fraud violations where I have worked on books and records of insurance companies. I have made an investigation in this particular case and have examined the books of account of State Securities Corporation and Union Reserve Life Insurance Company in evidence. I have seen the book, Government's Exhibit 16 for identification before. It is one of the books I had in my possession in connection with the examination of the books of the company. I had a conversation with Mr. Canning about this particular book in the room across from Mr. Cuthbert's office in the Heard Building on April 6, 1939. Inspector Fred Morrison of the postoffice was present. Mr. Canning and I discussed six bound books, including this one. He told me they were the books he had turned over to Mr. Cuthbert. He identified this book as a general ledger of Marquis, Cornes and Marquis. He said the entries in the book [461] were made by him.

Thereupon counsel for plaintiff offered in evidence Government's Exhibit 16 for identification to which the defendant Canning objected on the



(Testimony of E. P. Hair.)

grounds that there was no foundation laid, that it is hearsay, irrelevant, incompetent and immaterial to prove any issue in the case, which objection was by the court overruled and to which an exception was duly taken and entered in the record. Thereupon the document was received as Government's Exhibit No. 16 in evidence, which abstracted to the issue is:

GOVERNMENT'S EXHIBIT No. 16

Being the ledger of Marquis, Cornes and Marquis for the years 1930 and 1931, showing the receipts and disbursements from the sale of bonds of State Securities Corporation, together with agents' commissions paid and all receipts and disbursements with particular reference to the following entries under the accounting heading "Notes Receivable" in said book:

May 31, Johnson loan	\$800.00
July 3 Johnson	\$1170.00
August 7 Johnson, balance loan	\$30.00

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The Witness: I have seen Government's Exhibit 56 in evidence entitled, balance sheet, December 31, 1931, State Securities Corporation, in this case. From that examination I have been able to determine the correctness of the statement which is a part of Government's Exhibit 56.

(Testimony of E. P. Hair.)

Mr. Carson: May I ask a question on voir dire?

The Court: Mr. Hair, are these books that are here in evidence the only things that you have examined?

The Witness: No, I have examined no other records than the books here in evidence in determining the correctness of Government's Exhibit 56. My determination is based entirely on books here in evidence. Nothing else entered into it, and all of the books I have examined are now in evidence. They are all of the books of the State Securities Corporation and the [462] Union Reserve. The last entries of State Securities books were 1933. No other reports or communications made to me by anybody entered into these calculations.

Mr. Flynn: From your examination of the books and records of the State Securities Corporation in evidence, did you determine from that examination what the excess assets over liabilities if any were on December 31, 1931?

The Witness: The books disclosed there was no excess of assets over liabilities as of that date. The books of State Securities Corporation reflect that the liabilities exceeded the assets by \$54,862.54 as of the date that this statement purports to cover, that is Government's Exhibit 56 in evidence. I had a conversation with Mr. Canning about this statement of December 31, 1931 at the same place about April 8, 1931 and Mr. Morrison was present. I

(Testimony of E. P. Hair.)

showed Mr. Canning the work sheet I had prepared listing the assets and liabilities of December 31, 1931. I showed him that according to the books the liabilities exceeded the assets by some \$54,000 and that according to the income tax return which he had prepared the liabilities exceeded the assets by approximately the same amount, but the financial statement that went to the investors showed assets exceeding liabilities by \$135,000. He told me the discrepancy was because that in the statement which went to investors R. F. Marquis had prepared the figures for the reserve on the bonds. [463]

Mr. Canning turned over to me a large group of work sheets in connection with State Securities Corporation and Union Reserve Life Insurance Company, included in which is a work sheet listing assets and liabilities for State Securities Corporation as of December 31, 1931. That work sheet shows a profit and loss debit of \$54,862.54.

Thereupon, counsel for plaintiff offered in evidence the work sheet covering the financial statement as of December 31, 1931, to which objection was made by the defendants that the document was irrelevant, incompetent and immaterial, no proper foundation laid, which objection was by the Court overruled and to which ruling an exception was taken and duly entered in the record. The document was thereupon received as Government's Exhibit 63 in evidence, which abstracted to the issue is:

[464]

## GOVERNMENT'S EXHIBIT No. 63

## A Profit and Loss Statement of State Securities Corporation, dated 12/31/31:

STATE SECURITIES CO  
12/31/31

	P & L	Assets	Liab
Legal Res			
1st Apr. ....	35,723.50	35,723.50	
" .....	27,043.26	27,043.26	
" FP .....	5,731.60	5,731.60	
Notes			
Rec			
Bds .....	527,168.98	527,168.98	
Bonds			
sold .....	693,750.—		693,750.
" .....	7,000.—		7,000.
Sales			
Exp .....	104,936.66		
Mtg Rec. ....	46,475.00	47,007.47	
Int Rec. ....		46,475.00	
Mtgs .....	545.16		
Int. Paid .....	210.00		
Disc. Bonds .....	146.—		
Int Bd Notes .....		2,707.37	
M C M .....			
P. L. ....	33,186.72		45,318.75
	781,166.88		746,068.75
			23.75
			210.—
			146.—
			21,675.82
			54,862.54
			45,318.75
			781,166.88

(Testimony of E. P. Hair.)

The Witness: I determined from the general ledger of the State Securities Corporation that for 1930 there was a loss of thirty-three thousand, one eight—

Mr. Whitney: Wait a minute, Mr. Hamilton objects to this on the same ground as 63.

The Court: Very well, Mr. Whitney, the record may show the objection, and it is overruled.

Mr. Whitney: An exception.

Mr. Carson: Exception for all defendants?

The Court: Yes.

The Witness: For the year 1930, a loss of \$33,186.72; 1931, a loss of \$21,675.82; 1932, a loss of \$13,909.06; 1933, a loss of \$19,459.70, making a total of \$88,231.30. There is an account entitled "Surplus Donated" with a debit balance of \$23,667.33, making a total surplus deficit at the end of 1933 of \$111,898.63. The deficit increased each year. I determined from the books of account of the State Securities Corporation the amount of money drawn from that company by each of the defendants in this case. I observed the notations made in connection with those withdrawals in relation to what they were for. I also examined the books of account of the Union Reserve Life Insurance Company and determined how much these defendants had withdrawn from that company. Beginning with the year 1930, the following amounts were withdrawn

(Testimony of E. P. Hair.)

each year by the defendant, R. F. Marquis: Up through 1933 the withdrawal was only from the State Securities Corporation, and was as follows: 1930, \$10,005.24; 1931, \$12,788.65; 1932, \$7,820.91; 1933, \$7,437.62; for 1934 and thereafter the withdrawals are from both companies. He drew in 1934 from State Securities \$6,094.49, from Union Reserve, \$4,438.96, total of \$10,533.45; for 1935 from State Securities \$5,515.55, from Union Reserve, \$9,239.08, total [466] \$14,754.63; 1936, from State Securities, \$8,795.12, Union Reserve, \$6,358.98, a total of \$15,154.10; 1937, from State Securities, \$2,123.49, Union Reserve, \$9,391.91, a total of \$11,515.40; January and February, 1938, from State Securities, \$346.95, from Union Reserve \$638.42, a total of \$985.37, a grand total of \$90,995.37. I did not include in these figures any items shown to be for expense or travel. There were items of withdrawal where the only explanation was "MCM", and where that was the only explanation I didn't include those items. The books didn't show the purpose. I included all checks drawn to R. F. Marquis, where it was indicated it was for his personal account or on checks drawn to other parties where the explanation indicated it was for his account. A few items indicated he had retained the cash receipts, a few indicated warrants turned over to him, and a few indicating that premiums on his insurance were paid by the company. None

(Testimony of E. P. Hair.)

of the withdrawals of R. F. Marquis were indicated as being for salary. A few withdrawals in the first two years indicated that they were on account of commissions, but the bulk of them had no explanation. I found from the books that the payments to George H. Cornes were as follows: For the year 1930, State Securities \$11,987.79; 1931, from State Securities \$14,112.84; 1932, State Securities, \$9,248.68; 1933, State Securities, \$7,711.46; 1934, State Securities, \$4,614.21, Union Reserve, \$4,419.73, total \$9,033.94; 1935, State Securities, \$4,620.97, Union Reserve, \$6,613.43, total \$11,234.40; 1936, State Securities, \$8,751.88, Union Reserve, \$3,253.02, total \$12,004.90; 1937, State Securities, \$4,342.25, Union Reserve, \$7,778.-07, total \$12,120.32; January and February, 1938, State Securities, \$280.00, Union Reserve, \$584.80, total \$864.80; grand total \$88,319.13. I did not include in these figures any withdrawal by Mr. Cornes [467] for expenses or travel. Besides the payments indicating travel, I did not include any of those withdrawals which were marked "MCM". You could not tell just who got the money on those withdrawals. You could tell who cashed the checks, but not who got the money. I included all payments going to Mr. Cornes personally, payments to third persons for his account, receipts retained by Cornes, warrants turned over to him on cash premiums where it indicated the company paid them. This

(Testimony of E. P. Hair.)

account was in the same situation as R. F. Marquis. During the first two years some of the withdrawals were indicated on account of commissions, but during the latter years there was no explanation. There was no salary account charged to Mr. Cornes. From an examination of the books I found the following payments to H. S. Marquis: 1930, from State Securities, \$4,760.86; 1931, State Securities, \$5,397.31; 1932, State Securities \$5,673.48; 1933, State Securities, \$6,474.88; 1934, State Securities, \$3,266.25, Union Reserve, \$3,157.99, total \$6,424.24; 1935, State Securities, \$3,306.81, Union Reserve, \$4,908.64, total \$8,215.45; 1936, State Securities, \$4,406.87, Union Reserve, \$2,693.40, total \$7,100.27; 1937, State Securities, \$1,597.97, Union Reserve, \$5,691.64, total \$7,289.61; January and February, 1938, State Securities, \$187.50, Union Reserve, \$416.68, total \$604.18, grand total, \$51,940.28. I did not include in these withdrawals any items for expenses or travel, nor any payments which may have gone to him and were labeled "MCM". All that was included was payments to him or for his account, some sales turned over to him and some insurance premiums paid by the company for him. The first two years the items were indicated as commissions, but thereafter no explanation. There was no salary account charged to H. S. Marquis. There was nothing to indicate what the withdrawals were for. I made a similar



(Testimony of E. P. Hair.)

[468] examination of the books with reference to withdrawals made by E. G. Hamilton. The payments to E. G. Hamilton were as follows: Beginning August, 1935, from State Securities, \$2,176.00, Union Reserve, \$265.50, total \$2,441.50; 1936, State Securities, \$11,523.83, Union Reserve, \$355.00, total \$11,878.83; 1937, State Securities, \$4,840.18, Union Reserve, \$7,527.54, total \$12,367.72; 1938, January and February, State Securities, \$642.66, Union Reserve \$1,310.80, total \$1,953.46, grand total, \$28,641.51. This covers a period of approximately two years and eight months. I didn't see any items in the books showing travel expenses withdrawn by Hamilton. All of the payments made to Mr. Hamilton were indicated as being on account of commissions or advances of commissions. I couldn't find any commission account in the name of E. G. Hamilton. There was no way to determine whether the commission was earned at the time of the withdrawal. There was only a commission account kept in the books for the first couple of years. The only books and records the State Securities Corporation had after 1933 were cancelled checks, check stubs or vouchers, receipt books, bank deposit slips, stock certificate book and stock ledger—no cash book or general ledger—no journal. I made an examination to determine the amount of money drawn by the defendant Canning during the years 1930 to 1938. They are as follows: For the year 1930 from State

(Testimony of E. P. Hair.)

Securities, \$155.55; 1931, State Securities, \$500.00; 1932, from State Securities, \$400.00; 1933, State Securities, \$450.00; 1934, State Securities, \$430.00, Union Reserve, \$740.50, total \$1,170.50; 1935, State Securities, nothing, Union Reserve, \$700.00; 1936, State Securities, \$200.00, Union Reserve, \$200.00, total \$400.00; 1937, State Securities, \$200.00, Union Reserve, \$700.00, total \$900.00; 1938, January and February, State Securities, \$100.00, Union Reserve, \$625.00, total \$725.00, [469] grand total, \$5,401.05. I talked with Mr. Canning about the withdrawal items of all of the defendants. I think the first time, February 8, 1939, in his office. Post Office Inspector Harry Smith was present. Mr. Canning said he understood the officers of the State Securities and the Union Reserve were not drawing salaries. He said he had noticed they had withdrawn large amounts of money from the company. At a later conversation he described the method of accounting. This was either April 6 or April 8, 1939, and Mr. Morrison was present. Mr. Canning said he treated the withdrawals of the officers on the books and in the income tax return merely as advances from the company; that he did not include such withdrawals as income in the tax return, because it was merely a loan from the company. I have seen Government's Exhibit 33 in evidence before and have examined it. It is the annual report of the Union Reserve Life Insurance Company as of

(Testimony of E. P. Hair.)

December 31, 1936. I made an examination of the books as to such items on the statement as appear in the books. There are certain items pertaining to reserves on policies and similar items which are not on the general ledger. There is an item for cash balance at the end of the year on Government's Exhibit 33. The general ledger and cash book supporting that showed the amount which is included in the statement as the cash balance at the end of the year, December 31, 1936. I examined other records to determine what the cash balance was in the year 1936. These records were the little slips for the premium record for January and February of 1937. The statement of December 31, 1936 does not have one item for cash. It is included in other items. The amount of \$22,574.50 is described as United States Government bonds, stock, county, state, municipal and school district obligations, and cash items on hand and in the bank. I ascertained from my examination of the [470] books for the year 1936 and the receipts for January and February of 1937 that there was included with the cash as of December 31, 1936, \$6,259.25 which was received subsequent to December 31, 1936. I do not recall that I examined the books for the purpose of determining when the practice originated to enter as cash on hand at the end of the year items received during the first two months of the succeeding year. The time \$22,574.50 included HOLC bonds in the

(Testimony of E. P. Hair.)

amount of \$7,150.00. The statement also reflects an increase in mortgage loans of \$11,000.00 in mortgages under the names of Marquis and Cornes. I have examined the part of Government's Exhibit 7, the annual statement filed with the Corporation Commission for the year 1936. The same assets are included in Exhibit 7 that are included in Exhibit 33. I have examined Government's Exhibit 36 in evidence in connection with the books and records of the corporation. Exhibit 36 purports to be the combined balance sheet of the two companies, covering the balance sheet of Union Reserve Life Insurance Company as of December 31, 1936, the State Securities Corporation as of June 30, 1937.

Mr. Flynn: I will ask you if, from a statement of this kind, which covers or is a combined statement of two companies ending at different periods, as this does, one in June, 1937 and the other in December, 1936, if it is possible from an accounting standpoint to determine the financial condition of either one of the companies at any date or of both the companies at any date?

Objection was made on behalf of the defendant Canning that it was immaterial, called for conclusion of the witness, and had no place in the case. The only purpose for any of this examination should be an attempt, if it is an attempt, to show that this statement was fraudulently made. This is now in [471] evidence, and this Exhibit 36 shows

(Testimony of E. P. Hair.)

it is a combination of the statement of the Union Reserve Life Insurance Company as of December 31, 1936 and State Securities Corporation as of June 30, 1937. Now, whether this witness believes that can be properly done or not is entirely immaterial and beside the point, which objection was by the Court overruled and an exception duly taken and entered in the record.

The Witness: From the statement it is not possible to determine the condition of either company or both companies at any date.

Mr. Carson: I move to strike both answers as not responsive to the question.

The Court: The motion is denied.

Mr. Carson: And an exception?

The Court: Yes, the record shows an exception.

The Witness: The cash items on the statement, Government's Exhibit 36 in evidence, correspond to the cash items on the Union Reserve statement as of December 31, 1936, as shown in Government's Exhibit 36, and more particularly the statement filed with the Corporation Commission. The statement, Government's Exhibit 36 in evidence, includes the increase in mortgage loans which I have testified about. The item, "Insurance Inventory, \$106,065.92" is listed under the general heading "Assets and Disbursements." I had a conversation with Mr. Canning on two different occasions about that item,

(Testimony of E. P. Hair.)

first on February 8, 1939, when Post Office Inspector Harry Smith was present in Mr. Canning's office, and also in April when Mr. Morrison was present in the Heard Building. At that time that item was pointed out to Mr. Canning and he said Mr. R. F. Marquis had furnished that item to him in the statement. I talked to him afterwards, about April 6 or 8, when it was again called [472] to the attention of Mr. Canning, and he again told us that Mr. R. F. Marquis furnished that figure for the statement. He said he understood from Mr. Marquis that the item was the potential value of the insurance that was on the company books. He also told us that was one of the items which he referred to in his qualification appearing on his certificate on that statement. I had a conversation with Earl Canning in reference to the certificate and his name affixed to the statement. Mr. Smith and I talked to him in February, 1939. We showed him a photostatic copy of the three page statement. He said he had signed it and had made qualification showing that he had not prepared the figures relating to actuarial calculations. The last date covered by this statement is June 30, 1937. There were no other books of account kept by the State Securities Corporation after 1933 other than those I have mentioned. The report covers the Union Reserve to December 31, 1936 and State Securities Corporation to June 30, 1937. I made an examination of the

(Testimony of E. P. Hair.)

stock records of the State Securities Corporation as of June 30, 1937. The stock certificate books indicated that as of that date 19,049 shares of stock had been issued.

Q. Now then, did that nineteen thousand odd shares of stock—do the books indicate that condition, include the amount of stock which was allocated by the articles of incorporation and the minutes of the meetings in evidence here?

Mr. Carson: We object to that as immaterial, irrelevant and incompetent for any purpose in this case. The only thing anybody can do on the question of how many shares of stock were issued, is to go by the stock books and records, and if the minutes at some previous time had authorized stock to be set aside but it had not yet been issued and certificates made, it would not be issued and outstanding capital stock until that [473] was done, so this question is immaterial, irrelevant and incompetent for any purpose.

The Court: Re-read the question.

(The question was read by the Reporter.)

Mr. Whitney: You mean what it included in there?

Mr. Flynn: Yes

The Court: Well, the question may be answered.

(Testimony of E. P. Hair.)

Mr. Carson: May I have an exception?

The Court: Yes, an exception is allowed.

The Witness: Well, the minutes referred to the allocation of 50,000 shares, and, actually, 50,000 shares can't be included in 19,000 shares.

Mr. Flynn: In those nineteen thousand odd shares which the books show were issued and outstanding as of June 30th, 1937, including the shares which the books—either the books indicate or the testimony of Mr. Haymes, Mr. Link and Mr. Hall, who testified here and whose testimony you heard, paid for and did not receive their certificates, were they not included in these nineteen thousand odd shares?

Mr. Carson: Just a moment, we object to that, your Honor, as improper, irrelevant and incompetent for any purpose. The only thing anybody examining these stock books can go by is to see how much stock has been issued from the stock books and records themselves, and no matter whether anybody had intended to buy stock or not, until a certificate had been issued and had been entered in these books, it was not issued and outstanding stock.

Mr. Whitney: Mr. Hamilton objects on the ground it is entirely remote, going back to 1931.

The Court: Well, the objections are overruled.

Mr. Whitney: An exception noted. [474]



(Testimony of E. P. Hair.)

Mr. Carson: Exception noted.

The Court: It may be, yes, sir.

The Witness: That nineteen thousand and some shares does not include any certificates issued to those persons named, except for the six hundred shares to Mr. Hall. I talked to Mr. Canning about the method of keeping the stock account. I believe that was on April 8, 1939 in the Heard Building, when Mr. Morrison was present. Mr. Canning said that he had the understanding in some way that forty-five or 50,000 shares were allocated to the promoters.

Q. And you may tell where and what conversation that was, and what was said, and this is offered under the same restriction, your Honor, as to Mr. Canning only.

The Court: This was subsequent to the first of January, 1939?

Mr. Flynn: Yes.

The Court: Yes, all right.

The Witness: I believe that was on April 8th, 1939, in the Heard Building, where Mr. Morrison was also present. I asked Mr. Canning if it was not his understanding that 50,000 shares of stock had been allotted to the promoters of the State Securities Corporation. He told me that either from conversations with R. F. Marquis, or from notations on the permits issued by the Corporation Commission, that he had the understanding or

(Testimony of E. P. Hair.)

knowledge that forty-five or fifty thousand shares of stock were allotted to the promoters. I then pointed out the statement, and the third page of the financial statement dated November 26th, 1937, in which immediately above his signature and qualification and certification there appeared the statement that the stock records indicated that as of June 30th, 1937, there were 19,022 shares of stock issued and outstanding. [475] I asked him if a person who might own, for instance, a thousand shares of stock would not be warranted in believing that he held approximately one-nineteenth interest in the corporation? Mr. Canning said that that was so, that a person would be warranted in believing that. I then told him that since he knew that 50,000 shares of stock, or 45,000 which he had mentioned had been allotted to the promoters, that it appeared he was not furnishing true information to the investors of the corporation by only showing—

Mr. Carson: Now, just a moment, I object to that portion of the statement and move that it be stricken. This is the witness's conclusion of the law, and what he says he told Mr. Canning can have no weight of any kind or probative effect in this case. It is a theory of this witness and does not concern any act or statement of the defendant Canning, and it is immaterial, irrelevant and incompetent.

The Court: Well, as to what was said at the conversation. Of course, any remark this

(Testimony of E. P. Hair.)

person made and there wasn't any response to would not be of any effect, but on the other hand, it is a part of the conversation and the Court can appreciate what the response may be——

Mr. Flynn: That is the purpose of it, to see the reaction of Canning to that statement, maybe, your Honor.

The Court: Go ahead.

Mr. Carson: May I have a ruling on that?

The Court: Well, your objection is overruled.

Mr. Carson: And the motion to strike is denied?

The Court: Yes.

Mr. Carson: And an exception noted?

The Court: Yes, the motion is denied and an exception allowed. Go ahead. [476]

The Witness: Will the Reporter read what I said?

(Thereupon the beginning of the last answer was read by the Reporter.)

The Witness: (Continuing) ——that approximately only 19,000 shares of stock were issued and outstanding. He told me that he had listed or that he had put down the item of all the stock that was outstanding according to the stock book. I asked him if he had any other explanation for not giving the investors the true picture of the situation, and he said he did not.

(Testimony of E. P. Hair.)

When I first talked to Mr. Canning, I asked him regarding the payments he had received from the company. He told me he was not an officer or employee, but merely did the auditing work and prepared some statements. He said he could not tell exactly how much he received. He said he kept no record to show how much he was to be paid or was paid. He said he kept a diary, but had no record showing how much they were to pay him. He said from time to time he would say to Mr. Marquis, "Give me \$100.00, give me \$500.00", and he would be paid in that manner. He said the discontinuance of the books of the State Securities Corporation was done with the knowledge of R. F. Marquis. He said Mr. Marquis had spoken about getting the work done more cheaply, and that as a result he commenced making the records on work sheets rather than in the bound books. He told me he turned his work papers over to King Wilson and never saw them again. At a subsequent conversation, I again discussed the work papers with Mr. Canning and told him that the work papers turned over to me didn't include the work sheets of the State Securities for recent years, and he again said he had turned over the work sheets to King Wilson. Also he had searched his office after King Wilson left and he did not find [477] them. He told me that he used the income tax return to get the figures of the State Securities Corporation after he had turned the work sheets

(Testimony of E. P. Hair.)

over to King Wilson. He told me that he had prepared additional work sheets covering the six months' period to June 30, 1937. He said he thought he had turned over all work sheets, but he would make a further search of his office, and if he found anything he would turn them over to me. Mr. Canning said he had never before seen a statement combining the assets with disbursements, but that R. F. Marquis had told him they were entitled to show the expenses they had incurred over the period of getting the corporation started and, therefore, he had supplied the figures regarding this expense. Mr. Canning said that the death claims had been paid. He told me that some particular items were not posted, were MCM items, that he had already discontinued the books for Marquis, Cornes and Marquis, but was keeping a record on work sheets. I asked him what "MCM" meant and he said Mr. R. F. Marquis had at one time told him that those items were to be charged one-third each to Mr. Marquis, Cornes and Marquis. He said the first time he had seen the pink withdrawal bank records was when Mr. Lambert in Mr. Cuthbert's office had shown them to him. He said he didn't know why they were not posted in any of the books. In February, 1939, Mr. Canning told us that all of the stock sold was the stock of the promoters Marquis, Cornes and Marquis. He said none of the stock belonged to the State Securities Corporation.

(Testimony of E. P. Hair.)

### Cross Examination

The Witness: I have been in the Federal Bureau of Investigation since 1930. Prior to that time I had nine months experience in the accounting division in the Department of State at Washington and about six months with Haskins and Sells, certified public accountants in Baltimore. I have been employed exclusively by the Federal Bureau of Investigation since 1930. Most of the investigations I made were for the purpose of making reports and giving testimony as required. Since 1930 I have not had any practical experience in making entries in books in the original entries or keeping original books. My only experience in insurance accounting was as I related this morning. I understand there is a great difference in insurance accounting and you need an actuary. I have never had any experience in actuarial work or in calculation of reserves or in calculating the present value of money to be paid in the future. I am not familiar with the book on practical accounting by J. J. Esquerre. I do not know what he says about insurance accounting. I am not familiar with life insurance accounting by E. C. Whitton nor certain studies in practical life insurance by Hudnut. I don't pretend or claim to be an expert in insurance accounting. I do not understand every item in an annual statement of a life insurance company. The 1936 statement which is

(Testimony of E. P. Hair.)

a part of Exhibit 7 in evidence has many features of an ordinary balance sheet, but it has accounts that are not common to ordinary business. It does not show profit and loss in the same manner that a different kind of company would show it. I would not call Government's Exhibit 56 in evidence an ordinary balance sheet, but it should be. I do not know how the reserves are calculated in that statement. I do not know whether it is calculated as to the present value of money coming to the company in the future or not. I will say I do not know how they got [479] those items. They are not on the books. Mr. Canning told me the reason for the discrepancy between the statements and the other statements was that Mr. Marquis had furnished the figure for reserve on bonds for the statement. I don't understand the basis. I never did understand the basis for that, Government's Exhibit No. 33 in evidence, the annual report of the Union Reserve Life Insurance Company as of December 31, 1936. The cash and other items in that statement correctly reflects what appears in the books of the company in the ledger and cash journals. The item of \$7150 Home Owners Loan Bonds is in the ledger of the Union Reserve Life Insurance Company. The increase in mortgages in the amount of \$11,000 are reflected in the ledger of the Union Reserve Life Insurance Company. The statement in all its aspects clearly reflects the cash books and the ledger of the Union Reserve Life

(Testimony of E. P. Hair.)

Insurance Company. I know nothing about the calculation of reserves as shown in Exhibit 36. I don't know whether it is correct or not. I have no books or work papers of State Securities Corporation against which to check the statement. The first several items listed under assets and disbursements in Exhibit 33 in evidence are entirely applicable to the insurance company and are the same as appear in the December 31, 1936 statement. I would say it is incorrect because it has this \$105,065.92 item. That does not appear on any books I have seen here. Mr. Canning told me that Mr. Marquis had supplied that figure. Mr. Canning said it was the potential value of all the insurance business. I have no information at all about that item. It is not in the books. One criticism of those entries is that it should not appear in a statement of assets, disbursements and liabilities. Another is that it apparently is not complete. You can't tell from that list of disbursements why Marquis, Cornes and Marquis and Hamilton had taken out a large amount of money from the corporation. Those amounts don't show up in there. The ledger disbursements are [480] *are* rather vaguely detailed. They are grouped together. Insurance and management expense from date of organization, rent, supplies, employees, salaries are set out as one item. Commissions paid agents since date of organization is set out agency organization and maintenance since date of organization. The account is headed



(Testimony of E. P. Hair.)

Assets and Disbursements. I would not say that the statement truly reflects what they purport to reflect as contained in the books of the company. I don't know whether the reserves are correctly set forth or not. So far as the items can be checked against the books of the Union Reserve I think they correspond to those books. In the certificate which was made at the bottom of this statement, it states that this account is a combined sheet of the Union Reserve Life Insurance Company as of December 31, 1936 and the State Securities Company as of June 30, 1937. Mr. Canning makes the qualification exempting non-ledger items referring to actuarial calculations. I don't understand the actuarial calculations, the reserve for outstanding policies or bonds and the insurance inventory. This morning I mentioned the 1931 statement, the 1936 statement of the insurance company and that combined statement. I think when I first called on Mr. Canning, he offered to do anything he could to help us. Three or four days after that I got a part of his work sheets. I told him I would give them back to him. I have never given them back. Mr. Canning was invited over to see me and I told him what explanations I wanted. He was unable to find his work sheets so he could explain the statements. Each time I invited him over there and told him what I wanted to question him about. I questioned him about two of the statements and told him I thought some further explanation would be neces-

(Testimony of E. P. Hair.)

sary on his part. He told me he would do anything he could. He never asked permission to look at the books, but he did look at them. He didn't take the statements and trace the entries [481] through the books for me, and I didn't tell him "No I am not interested and you can tell it to the court." I don't think Mr. Canning ever said to me "I can't tell whether I did or not unless you let me see it in the books." I think at the first conference he was shown that 1936 pamphlet of the Union Reserve and asked if he prepared it and it is my recollection that he said he did not, but had prepared the annual statement and that this was apparently taken from the annual statement. I didn't say I needed to see the checks to determine whether I had made that statement. Neither Mr. Morrison or myself ever said to Mr. Canning, "you needn't explain it to us, you can tell it to the court." He offered to tell what he could and he did tell what I have already related. He never offered to go farther than that and go over the books and compare the items in these statements. He never did tell me that if he could be of any assistance in going over the books and compare any of these statements he would be glad to do it. He gave me some answer to every question I asked him. In the books the moneys that were paid to Earl Canning were sometimes marked salaries, others were just charged to some expense account. They were all charged to some expense account of

(Testimony of E. P. Hair.)

one or the other of the two companies as though all the money was paid to him for services he had rendered to the company. I don't find any items of \$500 paid to Mr. Canning. My list of stock outstanding as of June 30, 1937 consists of four pages and shows 19049 shares actually issued and outstanding according to the certificate books. I compiled the list from the stock certificate books of certificates issued. I did not want to clarify the life insurance company as sound or unsound. I would say from this statement, without going back of it, that it would appear that the company was solvent from the 1936 statement. Assuming it was true, I would say the company was solvent. I could not tell from Government's Exhibit 36 in [482] evidence whether the company was solvent or not. The 1934 statement filed with the Corporation Commission, if true, shows the company was solvent at that time. Mr. Hamilton's name appears in the company in 1935. From the statement attached to Exhibit 45 in evidence, I would say that if it is true, the Union Reserve Life Insurance Company was a solvent company at that time. I looked at some of the items on the 1935 statement of the Union Reserve Life Insurance Company filed with the Corporation Commission. I would say that if it is true the Union Reserve Life Insurance Company was solvent at that time. I have heard of Best's Life Insurance Report. The statements of the Union Reserve Life Insurance Company from

(Testimony of E. P. Hair.)

1934 to 1936 on their face indicate that the company was solvent. I heard Mr. Cuthbert testify here at the beginning of the trial. There was no mention of E. G. Hamilton on the stock certificates prior to February, 1938. I don't know where they got the figure February 7, 1938. I think Mrs. Hill said it was later in February. I had no data showing the exact date. I heard Cuthbert say he wrote in the date February 7, 1938. I did not examine the stock certificate books or the stock ledger of Union Reserve Life Insurance Company and don't know who the stockholders of that company were except approximately ninety per cent was held by State Securities. I don't know whether E. G. Hamilton was ever a stockholder of the Union Reserve Life Insurance Company. I didn't testify that I made a complete audit of the Union Reserve Life Insurance Company. I didn't go through the stock records of the company. I was not interested in that feature of it. I have examined the books of the State Securities Corporation *if* Government's Exhibit 56, the financial statement for 1931 is correct. I think there is a difference with respect to all items on the statement. The general ledger of State Securities Corporation shows no cash and the statement shows \$1095.46. [483] I don't know whether the money was in the bank or not. It was not on the books. The item of bills receivable secured for first lien of \$111,026.40 don't appear on the books under that name. I don't know whether

(Testimony of E. P. Hair.)

they had that on that date or not. There is no such item in the books as \$26,022.70 under the heading of net renewal premiums due and deferred. I don't know whether they had that item. I don't know anything about the item of \$502,073.74 listed as current bills receivable not due deferred but extended in process of adjustment. They had an account notes receivable in the general ledger which amount \$527,168.90 is a little more than the \$502,073.74 in the statement. The legal reserve of \$82,029.95 on bonds outstanding and as reserves does not appear on the books. I don't know whether they had it or not. I found nothing in the books relative to \$11,794.81 as legal reserves on bonds in process of adjustment. I don't know whether they had that. From the books I don't know anything about voluntary reserve for contingencies \$410,733.13. I know it was not set up in the books. I don't know what it is and whatever it is I don't know whether I had it. I don't know anything about the total of \$504,557.89 in liabilities. That item does not appear on the books. There are just two liability items on the books aside from the net worth accounts. One of those is "Bond Sales" in the amount of \$700,750.00. The other is Marquis, Cornes and Marquis in the amount of \$45,318.75. The liabilities set up on the books is greater than on the statement. The books show a deficit instead of an excess of assets over liabilities. I examined the general ledger of the State Securities Corpora-

(Testimony of E. P. Hair.)

tion. The account is headed Profit and Loss, and I presume it is a statement of their operations. There is no particular relation between that and the assets and liabilities on the bonds or reserves. It could be the difference to operate that year and what they got for 1930, 1931, 1932 and [484] 1933. The books show a deficit in the profit and loss account every year. I got that profit and loss statement the same as I got the one for 1931. I arrived at the withdrawals by the various men from the different corporations by taking the cash withdrawals or checks drawn in favor of the defendants or to other parties and their accounts. I took the withdrawals from both companies. I think generally I got the information from the books that are in evidence. I may have looked at a few cancelled checks of the Union Reserve. The cancelled checks of the Union Reserve Life Insurance Company were not introduced in evidence. Some of the stubs were. It was necessary to use them to explain some items in the book. I didn't get any of my information from the cancelled checks of the Union Reserve Life Insurance Company or from stubs or documents which are not in evidence. I looked at some of them. I did not examine all of the checks of the State Securities Corporation. There was a period when their records would reflect withdrawals of the officers. I took some of the cancelled checks and compared them with the stubs but not throughout the entire period. There was

(Testimony of E. P. Hair.)

one period of time when the cancelled checks were not available. The receiver didn't have them. I didn't get them afterwards. My report was made from a very incomplete set of records so far as the State Securities Corporation is concerned. I made my report from what I had. There was some of the checks for one bank account reflected in the books but I did not have the checks. In practically all cases the stubs or checks would give some explanation as to what the withdrawal was for. I disregarded check No. 3175 of Government's Exhibit 30. I made a list of checks for each one of the defendants who have withdrawn money. I have it here and this is it. The list for R. F. Marquis is included in these twelve folders. For the year 1934 I had the State Securities withdrawals in one folder. I have work sheets in here on [485] the bank account called reserve account. I have listed the various checks under the columns of "RFM", "George H. Cornes", "Harry Marquis", "MCM", "Cornes Travel", "H. S. Marquis Travel." I think there were three different bank accounts. One was called the "RFM Account." Then there was a current account and then a reserve account. That is the way they were indicated on the books. We did not have all the cancelled checks for the RFM account. There was check book or series of books for the reserve account, one for the current account. We either had the check stubs or the cash book for the RFM ac-

(Testimony of E. P. Hair.)

count. I examined all three accounts and the stubs and other things, the cancelled checks that Mr. Cuthbert received, all that I used have been introduced in evidence. Some explanation is made in the check book, but it does not show what the checks were issued for. Check No. 3050, a part of Exhibit 30, dated 23d of March, 1930 and drawn to R. F. Marquis for \$15.00 shows it was for agency expense. I did not charge that check to R. F. Marquis. I charged check 3048, being Exhibit 40 for \$20.00 to Harry Marquis. Here is one March 22, 1932, cash \$10.00 to George H. Cornes, no explanation on that one. I said in the first couple of years there were notations about commissions. These are check vouchers. On some of them there is an explanation. As to others the only explanation is "personal". Some are not marked at all, just the names and the amount. I do not know what the checks were for except as I have said. I didn't make any attempt to segregate the ones that were on commission and the ones that were personal. Every check that was drawn to R. F. Marquis that didn't say it was for him personally or like an expense account, I charged to him. I do not know what the check was for. There was no indication that it was used in the business. As to some of the items I do not know how they were used. As to others it was very evident how they were used.

Thereupon the bunch of twelve bundles was marked [486] Defendant's Exhibit I for identification.



(Testimony of E. P. Hair.)

The Witness: Defendant's I for identification is the twelve folders which contain a segregation or tabulation of the checks issued to each of these men. They do not include the withdrawals or payments made to defendant Canning. The record of cash withdrawals with reference to defendant Cornes are all through the records in evidence and are in the tabulation in those twelve folders. These two books cover the period of time to December, 1932 and contain nothing but receipts for cash withdrawals and some explanation as to who got the money. They pertain to some bank withdrawals slips which I mentioned this morning. I mean a slip that you would present at the bank window. You might call it a counter check. I included those items in the computation for Mr. Cornes of the amount he withdrew where the records indicated he got it. These two books together with the pink withdrawal slips are all the record I have. The pink withdrawal slips are with the bank statements for that particular month. Mr. Cornes' withdrawal would be evidenced by checks, some kind of warrants, insurance premiums paid by the individual for the company. Those are all reflected in the statements that were just marked for identification. The segregation is by months, and all items in a particular month are listed on one sheet, except sometimes when they were using more than one account. I have no detached slips indicating withdrawal from the office like those others in those two books. They cover

(Testimony of E. P. Hair.)

about a six months period. The travel expenses for Mr. Cornes are not included in the totals which I gave this morning. There was some years I didn't list the items of travel expense. What is reflected in the books is the amount the company paid him for travel expenses. There are some entries as to Mr. Cornes' commission account subsequent to 1934. I think that was for insurance. I have seen two or three groups of cards in Mr. [487] Cuthbert's office. I don't recall exactly what the cards do show but I do know that those cards do not constitute the commission record of any of these officers. I do not recall that they show the sale of stock and the amount of commission subsequent to 1934. The cards did not enter into my calculations here. I looked at the cards when I first started this investigation and I now say that the company maintained no commission account in the name of Cornes or other officers after 1933. I found other commission accounts or accounts where others had been paid commissions aside from R. F. Marquis, Harry S. Marquis, George H. Cornes and E. G. Hamilton. There are no commission accounts for the sale of stock during recent years, but there are various accounts with salesmen in the general ledger of the Union Reserve for commissions. The \$100 item on December 3, 1935 was to E. G. Hamilton. I didn't look for a check for it. There is none in evidence. It is not here. I presume all cancelled checks are out at the Corporation Commission. The records reflect that

(Testimony of E. P. Hair.)

there was money paid other salesmen besides Mr. Hamilton. [488]

I am sure that all the monies I say Mr. Hamilton received were received by Mr. E. G. Hamilton and not T. E. Hamilton or some other Hamilton. Some of the defendants received warrants, such as school warrants or other warrants issued by some unit of the state or county government. I don't remember any in the name of E. G. Hamilton. I said there was no commission account in the name of any of the officers. The record shows Mr. Hamilton received money and the notation was for commissions or advances on account of commissions. Traveling expenses were not included in the figures which I gave this morning. The amount of money which Mr. Harry Marquis received from January 1, 1930 to March 1, 1938 amounts to \$530.00 per month. I put the check marks on my work sheets on the stock outstanding as of June 30, 1937. I included in my tabulation of the amount of stock, stock certificate 102. That certificate is attached to the stub. It is three shares. Certificate No. 103 is here attached to the stub. I included in my tabulation certificate No. 108 for one share. It is attached to the stub. I included in my tabulation certificate No. 775 for 17 shares. The certificate is attached to the stub. It does not say cancelled. I included certificate No. 776 for 9 shares in my tabulation and the certificate is attached to the stub in the book. I included certificate 777 for 9 shares. It is likewise attached

(Testimony of E. P. Hair.)

to the stub. I included certificate 778 for 91 shares. It is attached to the stub. I included certificate 779 and 781. They are both attached to the stub in the book. Those certificates total 223 shares. Deducting that from the total of 19,049 leaves 18,826. I did not include certificate 104 for 100 shares. I did not included certificate 106 for 100 shares. Adding the 200 shares to the total makes 19,026 shares. Deducting certificate 184, which is attached to the stub, leaves 19,021 shares. [489] In going over the stock certificates it requires the exercise of judgment to determine what should be included and what should not be included. The same is true as to the figures on offsets and withdrawals. Government's Exhibit 36 in evidence states that the stock book was balanced out and that the stock records show therein on June 30, 1937, 19,022 shares of stock issued and outstanding, and assuming the correctness of the inclusion or exclusion of the certificates just mentioned, the tabulation shows 19,021. The amounts charged to Mr. Cornes did not include travel expenses. I did not consult the Shell Oil Company to find out if the \$120.74 check, a part of which was charged to Cornes, was for travel expenses. I have included these amounts in my tabulation.

Thereupon, check No. 2320 was marked defendant's Exhibit J-1 for identification, being a part of Government's Exhibit 24 in evidence.

The Witness: That is a duplicate voucher for check 2320 payable to the Shell Oil Company for

(Testimony of E. P. Hair.)

\$87.72. I put it as a withdrawal by Mr. Cornes. It is exclusive of the amounts shown to him for travel expenses. The same situation is true of the Shell Oil Company check of \$70.04. It is my claim that under the system of bookkeeping, this item is properly chargeable to Cornes, exclusive of travel expenses. I find some cash items retained by Mr. Cornes. I included in my tabulation the item of \$400.00 received from Robert S. Bushman. I made no investigation to find out whether that represented money that Mr. Cornes took out of the company. I charged one-third of check 7287 to Mr. Cornes. I charged \$5.00 of check 7326 to Mr. Cornes. The check was endorsed Mabel D. Henderson. One-third of check 7303 for \$25.00 was charged to Mr. Cornes. One-third of check 6752 was charged to Cornes. One-third of check 6763 was charged to Cornes. [490] One-third of check 6787 for \$60.00 was charged to Cornes. One-third of check 6802 for \$75.00 was charged to Cornes. One-third of check 6852 for \$70.00 was charged to Cornes. No part of check 6748 was charged to Cornes. One-third of check 7076 for \$25.00 was charged to Cornes. One-third of check 6984 was charged to Cornes. Marie Roder, the endorser, was a former employee of State Securities Corporation. One-third of check 2768 was charged to Cornes. That is true of checks 7212, 7850, 7937, 8266, 8003; 8206 I have one-half charged to Cornes. I never talked to Mr. Cornes about the checks before I charged them to him.

(Testimony of E. P. Hair.)

Apparently check 8683 was charged to Cornes. One-third of check 8487 was charged to Cornes. The money I charged to Mr. Cornes went to him personally or to other people for his account. I think all I charged to him is properly charged according to the records. I did not consult with him before I made the records. I can only testify as to what the records show. I used the same system in making charges against Mr. R. F. Marquis that I used against Mr. Cornes. I am not a certified public accountant. The records do not disclose the withdrawal or a check made to Mr. Marquis on September 18, 1937 in the sum of \$1,000.00. I have a notation of the payment to Mrs. H. S. Marquis June 10, 1937. I did not include that in H. S. Marquis' withdrawals. Where the records indicated, I charged one-third of the checks to Harry Marquis. The other one-third was charged to H. S. Marquis.

#### Redirect Examination

The Witness: In testifying on direct examination as to the items in the accounts and financial statements, it was not necessary to take into consideration the actuarial figures in those statements. I got the work sheets from Mr. Canning within a few days after February 8, 1939. I had them in my possession [491] until about the middle of May, 1939, when I left them in the United States District Attorney's office. I next saw them shortly before this trial started. During the time I had them

(Testimony of E. P. Hair.)

in my possession, Mr. Canning, nor anyone for him, never asked me for them. Where the books indicated that the money Mr. Cornes drew was for traveling expense, I didn't include that. Some of the items paid to Mr. Cornes may have been spent for his travel expenses. I got the information as to how to charge the checks from the checks themselves, the check stubs and vouchers and the books when they are kept.

Thereupon, counsel for plaintiff read certain exhibits in evidence to the jury, and the Government rested.

Mr. Carson: Your Honor, I have some motions I want to present. Do you want them presented now?

The Court: I presume the motions should be made in the absence of the jury. All right, gentlemen, you may retire from the court room in the custody of the bailiff, and wait until you are called to return.

(Thereupon the jury retired from the court room.)

Mr. Carson: Now, your Honor, on behalf of the defendant Earl Canning, I move that the court instruct the jury to return a verdict of not guilty as to him on the first count contained in the indictment, on the ground and for the reason that there is no substantial evidence of any kind that as to that count this defendant ever joined in the devising of a scheme to defraud, or ever took any part in it,

(Testimony of E. P. Hair.)

or in the mailing of any of the letters therein set out, or that the defendant Canning had any knowledge thereof.

The first count of the indictment relates to the mailing of a letter to Mr. Guy J. Baker of Casa Grande, Arizona. There is not one scintilla of evidence here to connect the defendant [492] Earl Canning with the offense sought to be charged in that indictment insofar as the mailing of the letter is concerned. There is no evidence here that the defendant Earl Canning devised or joined in the devising of any scheme to defraud as alleged in that count of the indictment.

The rule, I take it on this kind of a motion, is well stated in the case of *Salinger versus United States*, reported in 23 Federal (2d) at Page 48, by the Circuit Court of Appeals of the Eighth Circuit, in which this rule is laid down, that "Unless there is substantial evidence of facts which exclude every other hypothesis but that of guilt, it is the duty of the trial Judge to instruct the jury to return verdict for accused", and where all the evidence is as consistent with innocence as with guilt, it is the duty of this court to reverse a judgment against the accused, citing cases.

(At this point, Mr. Carson announced several citations to the court.)

Now, these defendants are here charged generally, and this trial has been conducted against the defendants generally, but in considering the motion it is,



(Testimony of E. P. Hair.)

as I see it, incumbent upon the court to look at this evidence as it concerns this defendant Earl Canning alone, and when the court does, the court can find no substantial evidence in this case to support the allegations of the first count of this indictment, either as to devising the scheme to defraud or as to the mailing of the letter therein set out, and I wish to make the same motion, your Honor, on the same grounds as to the second count of this indictment, which concerns the letter alleged to have been mailed to Mr. H. G. Simmons at Cave Creek, Arizona, and I call your Honor's attention to the fact that there is not one word of evidence here even squinting that Earl Canning had anything [493] to do with the mailing of the letter, or even knew that it had been mailed, and the same is true as to the letter set forth in the first count of the indictment, so I move the court to direct the jury to return a verdict of acquittal of the defendant Earl Canning upon the second count of the indictment, upon the ground that the evidence wholly fails to support the allegations in the indictment, and upon the same ground as I stated as to the first count of the indictment. And then I make the same motion as to the third count of the indictment upon the grounds heretofore stated.

The third count of the indictment is based upon the alleged mailing of a letter to Mrs. May E. Bonar, and there is absolutely no evidence of any kind connecting the defendant Earl Canning with

(Testimony of E. P. Hair.)

the mailing of that letter, or knowledge that it was to be mailed or had been mailed, and there is no substantial evidence here of any kind that he ever joined or devised, ever devised or joined in devising any scheme to defraud, both elements which are here necessary, and I make the same motion upon the same grounds as to the fourth count of the indictment, which involves the mailing of a letter to Mr. Gerald Palmer on July 20th, 1937, and you will recall that there is not one word of evidence even squinting that Earl Canning had any knowledge that that letter was to be mailed or had been mailed, or participated in the mailing thereof, and there is no substantial evidence here that he ever devised or joined in the devising of any scheme or artifice to defraud, or ever took any part in it under any count in this indictment.

There is no evidence here, your Honor, that he ever sold or attempted to sell or participate in the selling of or share in the profits of the sale of any sale of any stocks, bonds or other securities of either of these companies. It is in evidence from [494] the Government's case that he was not a stockholder, an officer or a director of either of these companies, and by the Government's witnesses, that he had nothing whatever to do with the policies, the management or the control of either of these companies, or the action of their employees, and it is in evidence here under the Government's case that the only thing that the defendant Earl

(Testimony of E. P. Hair.)

Canning had to do with these companies or these other defendants in any particular is, that he was an outside auditor and accountant who came over occasionally and assisted in the making of annual statements, and it is in evidence by the Government's witnesses, the Government witness Mr. Hair, that the statement of July 31st, 1936, is correct as reflected by the books of this company, and the ledger and the cash journal, so that there could be no possibility there.

Now then, the Government seeks, I suppose, to hold Mr. Canning in this case by virtue of the fact that Mr. Hair testified he had drawn some \$5,400.00 from these two companies in the course of these eight years, but Mr. Hair also testified that as to that money drawn by Mr. Canning, it was charged upon the books as an expense, in the beginning as a salary, in the later days as compensation for services, so that there is no connection there that can be drawn, and, your Honor, I make the same motion upon the same grounds as to the fifth count of the indictment, which relates to the alleged mailing of a letter to Mr. W. H. and/or Mrs. Helen G. Etz, at Yarnell, Arizona, September 27th, 1937, and I call your Honor's attention again to the fact that there is no evidence of any kind here that the defendant Earl Canning had anything at all to do with the mailing of that letter, ever knew it was being mailed or that it had been mailed, and there is no substantial evidence here of any kind to show

(Testimony of E. P. Hair.)

that he ever devised or joined in a scheme to defraud. [495] So I make the same motion as to the fifth count of this indictment upon the grounds heretofore urged.

Now, as to the sixth count of the indictment, I move the court to instruct the jury to direct a verdict of acquittal for the defendant Earl Canning, upon the ground that there is no substantial evidence in this case that this defendant Earl Canning ever conspired with anybody to commit any offense, any offense against the Postal laws of the United States, or to defraud any person whomsoever.

Take that sixth count in the indictment, and they say that the defendants— “—did conspire, combine, confederate and agree together, and with each other to commit divers offenses charged against said defendants in divers counts of this indictment—”.

Now, they have not shown that Earl Canning knew anything about any of the preceding offenses charged in any of the preceding counts in this indictment, the mailing of those so-called indictment letters, not a thing in there to show that he either knew or should have known, or did know or ever learned that those letters had been mailed, and that is the ground of this charge of conspiracy—“To conspire, combine, confederate and agree together and with each other to commit divers offenses charged against said defendants in the divers counts of this indictment preceding this count, and made

(Testimony of E. P. Hair.)

offenses by Section 215 for the Criminal Code of the United States, the allegations of which the first five counts of this indictment are incorporated in this count by reference as fully as if they were here repeated, and to use the Post Office establishment of the United States in the commission of said offenses—”. And, that is the ground of the alleged conspiracy.

The balance of the indictment is,” —and that said [496] defendants did thereafter do divers acts to effect the object of said lawful and felonious conspiracy—”, which was to commit the acts set forth in the other five counts of the indictment, and to unlawfully use the Post Office establishment of the United States— “—to effect the object of said unlawful and felonious conspiracy, to-wit: The several acts of placing letters in the Post Office of the United States at Phoenix, Arizona, and causing said letters to be sent and delivered by mail as described in said preceding counts, and the numerous acts of preparing said letters for mailing and delivery, and the making of the false and fraudulent pretenses, representations and promises in the first count of this indictment described, and obtaining by means thereof the monies and properties of said persons named in the first count of this indictment—”.

Now, your Honor, there is no evidence that Earl Canning was a party to any conspiracy to use the mails, or that he had anything to do with the using

(Testimony of E. P. Hair.)

of the mails as set forth in these other counts, or that he had anything to do with the devising of any plan, scheme or artifice to defraud anybody, or use the mails in furtherance of such scheme to defraud.

And then we go down here then to the other overt acts which they say were committed:

“That in furtherance of said conspiracy, on or about November 26th, 1937, defendants prepared and caused to be prepared the combined balance sheet of the corporation and insurance company as of June 30th, 1937.”

The second is that they did that on or about November 26th, 1937, that they mailed or caused to be mailed to stockholders of the corporation and others a letter dated November 26th, 1937, and included in said letter a copy of the combined [497] balance sheet of the corporation and the insurance company as of June 30th, 1937, and that they prepared and caused to be prepared an annual statement of the insurance company ending December 31st, 1936, and there is no proof or allegation here of any kind that that statement is in any particular incorrect, let alone fraudulent. On the contrary, Mr. Hair says that that statement, according to the books, is correct as reflecting the figures carried in the books, and then the other, that they mailed that annual statement. There is no proof or allegation that Mr. Canning knew that or had anything to do with it, or encouraged or countenanced it, or that he had power to stop it or perform any of these

(Testimony of E. P. Hair.)

overt acts except to make the statement as of June 30th, which I will come back to, and that is all there is to this sixth count of the indictment.

Now, as to the combined—so-called combined balance sheet as of June 30th, 1937, there is no evidence here that that statement was in any manner fraudulently made. It shows upon its face that it reflects—it is set out that it is a statement of the assets and disbursements and liabilities, and now the statement of disbursements, assets and disbursements set up, your Honor, the ledger disbursements and clearly state the assets and disbursements, lists the disbursements and the amounts; lists the insurance inventory and the reserve for outstanding policies which Mr. Hair testified Mr. Canning told him was made by Mr. Marquis and which are actuarial calculations, and which Mr. Canning excepted in his certificate—“The foregoing balance sheet reflects the condition and affairs of the companies except such non-ledger items as refer solely to actuarial calculations—”, and Mr. Hair testified that insofar as he was able to check this statement with the books of the Union Reserve Life Insurance Company, they correctly reflect the [498] record, and the criticism that the Government makes in that is, that the non-ledger items are not correct. Well, Mr. Canning excepts them from his certificate and takes no responsibility for them, so then, your Honor, as to that sixth count of the indictment, bearing in mind the rule that I have quoted here

(Testimony of E. P. Hair.)

from this case of Salinger versus United States which I would like again to read— “Unless there is substantial evidence of facts which exclude every other hypothesis but that of guilt, it is the duty of the trial judge to instruct the jury to return a verdict for the accused, and where all the evidence is as consistent with innocence as with guilt, it is the duty of this court to reverse a judgment against the accused.”

Now, in the light of that rule with which I take it there could be no quarrel, it is incumbent upon the court to view this and see whether or not there is any substantial evidence to exclude every other hypothesis except that of guilt as to the defendant Earl Canning.

Now, your Honor, in measuring that, keep in mind that the only connection that any of these acts hereunder taken to be shown is that this combined statement as of June 30th, 1937 and the statement of the Union Reserve as of December 31st, 1936, and on those two statements the testimony in this case is that the statement, the annual statement is correct as shown by the ledger and the cash book and the books of account of the Union Reserve Life Insurance Company and there is no criticism of it.

Then we come down to the statement of June 30th, 1937. The testimony is that such ledger items as appearing upon that statement that can be checked through the books of the Union Reserve



(Testimony of E. P. Hair.)

Life Insurance Company are correctly stated in this combined statement, and that the criticism of the Government [499] as to that statement is that the non-ledger actuarial calculations can not be shown to be in the books, and that is all, and Mr. Canning, in his certificate says he did not make those actuarial calculations because he is not an actuary. As Mr. Hair said, he is not an actuary. Neither one of them are familiar with making actuarial calculations or insurance inventory values or reserves, all of which are actuarial calculations, and Mr. Hair, the Government's witness, testified that so far as he knew, those were correct because he could not check them and say they were wrong, and because he was not an actuary and could not compute them and he would not indicate to do so, and, therefore, your Honor, there is not one word of testimony here that that statement of June 30th, 1937, is not correct.

Now, the Government may say that Mrs. Walker testified that she took this statement to Mr. Canning and that he signed it and from that she traced the signature upon the stencil, and that is correct as I understand the testimony at this point. But, as to that I would like to read to you her testimony showing that it was not communicated by her or by anybody else to the defendant Earl Canning, that this statement was to be used to defraud anybody or that it was to be mailed. What she said was this:

(Thereupon excerpts of the testimony of Harriet

(Testimony of E. P. Hair.)

Walker, witness for the Government, was read to the court by Mr. Carson from Reporter's transcript.)

Mr. Carson: Now, your Honor, there is no evidence here of any kind that Mr. Canning knew in any particular that that statement was incorrect, if it is incorrect. Good faith is to be presumed. Mr. Hair testified that the figures on that statement which were susceptible of checking in the assets and the liabilities were reflected by the books of the Union Reserve Life [500] Insurance Company, and the things that were not so reflected were those actuarial calculations on insurance inventory and reserves——

The Court: I presume counsel will have—there will be some motions from other counsel, and perhaps I had better call in the jury.

Mr. Whitney: Are you going to rule on those motions as you go along?

The Court: No, I am going to hear—I think it will expedite matters to hear these motions and let the Government make discussions as they see fit. I think it will expedite matters if you will just present your motions at this time and let the Government answer them.

Mr. Carson: Do you want me to proceed now?

The Court: I think it will require up to noon to hear you gentlemen?

Mr. Carson: Oh, yes.

(Testimony of E. P. Hair.)

The Court: I might let the jury come in now and excuse them until two o'clock.

(Thereupon the jury was recalled to the courtroom and excused until two o'clock P. M. of the same day.)

(In the absence of the jury, the proceedings were continued as follows:)

The Court: Very well, proceed with the presentation of your motions. Had you concluded, Mr. Carson?

Mr. Carson: Then the only other reference to this that I find by any witness as to any connection of Mr. Canning with this statement of June 30th, 1937, is by the same witness, Mrs. Walker. I mean by that, in connection with the mailing or preparing for mailing of the statement. In connection with the cross-examination by Mr. Wilson, apparently in an answer to a [501] question by the court, the witness said:

"A stencil. No one actually wrote their name on the paper or on the stencil either.

"The Court: You did testify that Earl Canning traced it?

"The Witness: Not on the stencil. I took a typed piece of paper that had a little statement on the bottom of that statement over to Mr. Canning to sign and copy his name from that onto the stencil, and I remember distinctly because I had to trot back over to the office and retype it and put in the words he wanted".

(Testimony of E. P. Hair.)

So, your Honor, so far as the defendant Earl Canning is concerned, I submit to you that there is no substantial evidence here whatever that he ever devised or joined in any scheme to devise, or any conspiracy to commit these acts charged, or that he partly participated in the mailing of these letters, which is the gravamen of the offense in all of the counts in this indictment, so he is entitled to an instructed verdict of acquittal on all counts.

Following the motion for directed verdict on the part of the defendant Canning, the defendant moved to strike from the evidence all the parts of Government's Exhibit 26 and 27 for identification, which had been marked and put in evidence, they being the minutes of State Securities Corporation and the Union Reserve Life Insurance Company, respectively, on the ground that as to defendant Canning they are hearsay and no foundation had been laid for their introduction; that they were not properly identified; there is no showing, direct or substantial, that Mr. Canning was present at any of these meetings; that there was no showing that the minutes were kept in the regular course of the business of the two companies, no showing that it was the [502] regular course to keep the records in the manner in which they were kept; that the evidence shows they were written up sometimes at the end of the year, and the defendant Canning moved to strike from the evidence separately Exhibits 4, 5, 6, 28, 39, 40, 41, 42, 43, 44, 45, 46, 52, 53, 54, 55, 56, 57,

(Testimony of E. P. Hair.)

58, 59, 60, 61, 62 and 63, on the grounds that they are irrelevant, incompetent and immaterial, are remote, are not the best evidence, as to him they are hearsay, that no foundation has been laid for their introduction, and defendant Canning further moved to strike from the evidence Government's Exhibits 8, 9, 10, 11, 12, 14, 15, 16, 17 and 18, they being the books and records of the companies, on the grounds that no proper foundation had been laid for their introduction, no showing that this defendant had any charge of the bookkeeping system, as to him they are hearsay, and incompetent, irrelevant and immaterial. Thereupon, defendant Canning moved to strike from the evidence all of the witness Hair's testimony, for the reason that the witness Hair testified that some of the figures which he presented in Court he got from those not in evidence and upon which he could not be cross-examined; that his evidence is incompetent, irrelevant and immaterial, because not based upon facts or the books and records in evidence. Whereupon, the Court denied the motions to strike and the motion for a directed verdict, to which rulings of the Court an exception was duly taken and entered in the record.

Thereupon, the defendants entered upon the presentation of evidence in support of their case; and

### RAYMOND F. MARQUIS

was called as a witness in his own behalf, and being first duly sworn, testified as follows:

#### Direct Examination

My name is Raymond F. Marquis. I live at 941 West Palm [503] Lane. I am 64 years old. I came to Phoenix in September or October, 1929. I have been engaged in actuarial insurance business since 1899. I had been associated with the Bankers Reserve Life of Omaha, the Western Union Life of Spokane, the New World Life of Spokane, the Prudent Life of Bismark, Surety Fund Life of Minneapolis, the Northern States Life of Minneapolis, besides actuarial work done for other companies, and this company we have here. My purpose in coming to Phoenix was to organize a life insurance company that would assure me a living and occupation in my old age. When I first came I contacted the State Insurance Department. I learned that there was a company here, the First National Life Insurance Company. I also learned there was a company in process of organization, whose organizers had left it. That was the Arizona Life in process of organization with the Arizona Holding Company. The organizers of the Arizona Holding Company, I was told, were Dr. Ellis and Mr. Herbert Hall,

(Testimony of Raymond F. Marquis.)

and three men whom I do not know. The Corporation Commission told me that they would not issue a license until the Arizona Holding Company situation was straightened out. I got in touch with the organizers or directors of the Arizona Holding Company as best I could. I found Mr. Hall and Dr. Ellis. Following my conference with the Corporation Commission I saw the directors of the Arizona Holding Company. Later on I contacted most of the subscribers to the stock of the Arizona Holding Company. I couldn't find all of them. We had articles of incorporation prepared for the State Securities Corporation. Government's Exhibit 25 in evidence is the articles of incorporation of State Securities. After the organization of State Securities Corporation we had a first meeting of the directors. After that we contacted all the stockholders of the Arizona Holding Company that we could find. We gave them the privilege [504] of taking an equivalent amount of their original subscription in stock of the State Securities Corporation or 80% of their cash that the Arizona Holding Company had on hand. There was approximately \$10,000.00 deposited in escrow by the Arizona Holding Company. That was required by the Corporation Commission. When we contacted the stockholders, we found that between seven and \$8,000.00 had not been deposited in escrow as required by the Corporation Commission. I believe we transferred about \$8,000.00

(Testimony of Raymond F. Marquis.)

to the State Securities Corporation and issued stock for that. We gave the subscribers stock for 100% that they had subscribed for. We also took over the Kerby Investment Company at the request of the department. We issued stock of Mr. Kerby's allocated stock in the State Securities Corporation for the stock that was outstanding in the Kerby Investment Company. The allocated stock was paid for or to be paid for by services rendered, rent and things of that nature that were of value to the company. After the articles were filed, the 50,000 shares were not issued. There was an order by the Corporation Commission that it was supposed to be issued and escrowed. However, they just stated not to issue it and that would be considered the same. Defendant's Exhibit A for identification contains an application to sell stock, to sell a certain number of bonds, together with the reserves that were to be set up to mature each bond, and various other papers in relation to a permit being issued to the company, together with the Corporation Commission's minutes and orders. The signature on the instrument in the exhibit, dated March 10, 1931, is the signature of J. Elmer Johnson. I am acquainted with him. At the time the instrument was prepared and dated he was examiner for the Corporation Commission and examined insurance companies. That statement was made by him. He made an examination of the State Se-



(Testimony of Raymond F. Marquis.)

curities [505] Corporation at the time or before he made this letter.

Thereupon, defendant's Exhibit A was offered in evidence, to which offer an objection was made by counsel for the plaintiff, which objection was by the Court overruled, and the document was received as defendant's Exhibit A in evidence, which abstracted to the issue is:

#### DEFENDANTS' EXHIBIT A

A part of the file of the Corporation Commission relating to the business and regulation of the State Securities Corporation, including applications for permits to sell stock and bonds, financial statements of the company, copies of the proposed bond, statement of the assets and liability of the corporation, from year to year, reports of investigations of the company made by the Corporation Commission, orders of the Corporation Commission and copies of the permits issued to the company to sell stocks and bonds.

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The Witness: At the time of the organization of State Securities Corporation, or at any time thereafter, I did not cause said corporation to be organized by reason of any scheme or device entered into with anybody else, any of the other defendants, or any other person in the world, or in my own mind, to defraud anybody. Following the in-

(Testimony of Raymond F. Marquis.)

corporation we issued bonds. The purpose of selling bonds in preference to stock was that in 1929 the stock market and stocks in general were in disrepute, and the State refused to allow me to go ahead unless I could devise some plan to absorb the losses of the old Arizona Holding Company, so I devised this bond, which has been used by several other companies that are in operation, and through the means of this bond we absorbed the old stockholders without loss. The bond provides for the organization of a life insurance company, by giving the State Securities [506] Corporation the privilege of investing the net proceeds over and above the reserve required to mature the bonds, in securities that would be acceptable to the State Department for reserves and surplus of a life insurance company. It grants full permission for the company to use the entire net proceeds of all sums paid by the purchaser to finance the life insurance company. There were some over eight hundred bonds sold. The bonds provide for payment of \$750.00 in five equal installments of \$150.00. The bond also provides for certain other bonuses. The bond provides that five shares of stock and a bonus of five per cent of the premiums that the life insurance company collected each year be given the holder. The allocation of 50,000 shares to the incorporators set up in the articles was not done with the intention of defrauding anyone, or with the intention that it be used to defraud anyone, and so far as I know, it

(Testimony of Raymond F. Marquis.)

was never used to defraud anyone. I paid most of the costs of organization personally, and from time to time I advanced such money as was necessary. I advanced altogether about \$10,000.00 in money. The State Securities Corporation was operated without an insurance company until in the early part of 1933. We had already chartered a life insurance company which we proposed to call the Western National. We were approached by the Corporation Commission, who asked me if I would make a statement for them. At that time he didn't tell me for whom. I said, "If you bring the books to my office I shall be glad to make it." They *They* brought the books of the First National over to my office and I made the statement with Mrs. Hill's help. She was then employed by the First National Life. At that time the name had been changed to Union Reserve. At that time there was a contract of purchase of the company between Mr. Waddoups and Mr. Lorenzo Stohl and his associates. About a week later I was approached [507] to know if I would consider taking over the First National Life Insurance Company and putting the securities of the State Securities Corporation back of it in lieu of the securities Waddoups had. Following that he took the matter up with the Board of Directors. Mr. Cornes, I think, visited with part of them and talked with them personally regarding it. We later purchased the option agreement from Mr. Stohl. We paid him for the contract by returning to him

(Testimony of Raymond F. Marquis.)

the \$7,000.00 mortgage upon his home in Salt Lake City and redeemed certain shares that he had sold to friends of his—shares in the Union Reserve Life. We bought the contract on March 18, 1933 and within the next day or so took over the management. At the time the State Securities Corporation purchased the Union Reserve Life Insurance Company, there was no intent on my part to use that insurance company to defraud anybody. Before or at the time the insurance company was acquired by State Securities Corporation I had not *enter* into any agreement with these defendants, or with anyone else, nor did I have in my own mind any scheme or device to use this insurance company to defraud anybody. At the time we acquired the insurance company and at the time we organized the State Securities Corporation I did not have in my mind any scheme, nor did I agree with the other defendants, or any of them, or anyone else, that I would acquire the State Securities Corporation and an insurance company and use them later to defraud anybody. I never, on the date set out in the indictment, December 9, 1929, or at any time before or after that, entered into any conspiracy or agreement with the defendants, or any of them, or any other person, to use the mails to defraud. Following the acquisition of the insurance company we started writing life insurance, but we had to change the policy. The company had about \$700,000.00 worth of business in force when we bought [508]

(Testimony of Raymond F. Marquis.)

it. We made a contract with the company for the State Securities Corporation to take over the entire business of the life insurance company. Before that Mr. Waddoups, or one of his companies, had the exclusive right to write life insurance, and it was required by Mr. Waddoups of Mr. Stohl that this contract be continued until we could get all of Mr. Waddoups' securities eliminated. I think we finally and completely bought up the option contract in the fall of '33 or early in '34. We paid Mr. Waddoups in mortgages on his own property and by transfer to him of some real estate. I do not remember how much money we paid Mr. Waddoups. We had this contract to write the insurance for 95% of the first year's premium and 7% of the yearly renewals just long enough to get Mr. Waddoups paid off. We then made a new contract, except that the commission was 75% instead of 95 and the renewal commission was eliminated entirely. The payment of expenses were to be allocated to their proper sources. The insurance Company was to pay its portion of the expenses. In 1933 we produced about two and one-half million of insurance and in 1934 about \$1,900,000.00, in 1935 around \$1,000,000.00 and a quarter and about the same amount in 1936; in 1937 around \$400,000.00. That year the premium income, after the payment of agents' commissions, was not sufficient to set up the reserves and operate the company. We operated at a loss that year. We could not make the statement for 1937 because the

(Testimony of Raymond F. Marquis.)

premium income would not cover the increase in reserves, the expenses of management and the death claims. Our death claims in 1937 was a little over \$60,000.00, \$31,000.00 of which occurred the last week in December. That death loss was greater than the table of expectancy would show. I don't know how much. We ordinarily reinsured these policies, but in the fall of 1937 we had not been financially able to pay for [509] our reinsurance. We were not able to collect renewal premiums in cash, and as a result of that we were unable to pay death losses. Government's Exhibit 36 in evidence is a combined balance sheet of June 30, 1937 of State Securities Corporation and Union Reserve Life Insurance Company. The item "Reserved for outstanding bonds" is the present value of the bonds of State Securities Corporation that were outstanding. I figured that value. The reserve for outstanding policies of \$105,882.43 is the present value under the American Experience Table of Mortality on all of our outstanding policies.—the reserve required by law. The other items, "Policy coupons", "Policy bonuses" and "Accounts payable" are correctly stated. The \$6,259.25 which the Government charges was fraudulently included in Government's Exhibit 33 in evidence represented premiums which were due in December, 1936, on which arrangements for an extension had been made until the month of January or possibly the month of February. That is called a due and deferred premium. We had to set

(Testimony of Raymond F. Marquis.)

up the reserve for that policy in the year 1936. I have been in the insurance business a good many years, and I am familiar with the system of bookkeeping employed by life insurance companies in the United States as to due and deferred premiums. From a bookkeeping standpoint, unless there is a specific reason for it, they are presumed to be put in the due and deferred account. They are both admitted assets. It does not change the status. They are carried as cash in the office. Some insurance companies close their bookkeeping accounts as of November 30 and some as of December 31st. It is necessary to carry these items either as due or deferred premiums or as cash items. We chose the method of carrying them as cash items rather than due and deferred. That money was received by the company in the months of January and February, [510] 1937. The item \$7,653.37, which they say the statement says was cash in the office, and at which time they alleged in the indictment, it was only \$1,394.12, includes the item \$6,259.25 which was due and deferred premiums, but was carried as a cash item. I set up the actuarial figures for 1936. They are correct. The item "Insurance inventory" in the combined report is the actual commercial value of the business we had on our books. It is figured anywhere from \$10.00 per thousand to \$30.00, depending upon the kind of policy and the loadings. I have examined the combined balance sheet of June 30, 1937, and I prepared the letter that went with it.

(Testimony of Raymond F. Marquis.)

At the time I prepared it and sent it through the mails, I did not have any scheme or device planned in my own mind, or any agreement in conjunction with any of the defendants, or any other person who mailed this exhibit Government's No. 36, in aid of any scheme to defraud. [511]

Harry Marquis did not come here at the same time I came. He came about the time of the final arrangements, after we knew the Corporation Commission would permit us to go ahead. Mr. Harry Marquis put money in the State Securities Corporation. I don't know exactly how much. I think somewhere between \$3,000 and \$3500. He sold some bonds. I don't know the exact amount. He owned them before he came here. He put in later some commissions he received from an insurance company he had worked for. I don't know how much. From the inception of the State Securities Company I was in active management and control of the company and formulated its policies. I consulted with E. J. Flanigan my attorney who is now dead and with my associates Mr. Cornes, Mr. Harry Marquis, Mr. Leavitt, and on questions of major importance I went to the Corporation Commission and discussed it with them. After we acquired the Union Reserve Life Insurance Company I was in active control of both companies and formulated policies of both companies and was in active control and management of the two companies in the office. On questions of policy and management I con-



(Testimony of Raymond F. Marquis.)

sulted with Mr. Cornes, my brother, the Insurance Department and our attorney Mr. Fields. Mr. Harry Marquis and Mr. George Cornes were in the office sometimes in the morning, sometimes all day. Frequently they left Monday morning and came in Friday night. There were many questions which came up which to be determined immediately and at times I could not consult with other members of the corporation and the officers. When that happened I consulted my attorney or the Department, and if I could not do that I was compelled to do what was necessary and discuss the matter when they came in. I managed the business as was necessary. Mr. Hamilton came to Phoenix in the summer of 1935. I had known him by reputation before. I had some correspondence with him before he came to Phoenix. I met him first at our office. As a result of that meeting Mr. Hamilton made [512] a contract to write life insurance. He started out to write life insurance and then was transferred to the sale of stock. I don't think he wrote any life insurance. He continued with us until the end. I did not at any time during my association with Mr. Hamilton enter into any agreement with him for the formation of any scheme or device with intent to defraud any one or to use the mails to defraud. I did not enter into any conspiracy with Mr. Hamilton or anyone else to use the mails in furtherance of a scheme or device to defraud. Mr. Cornes and myself originally made some mort-

(Testimony of Raymond F. Marquis.)

gages and turned them over to the State Securities Corporation which company later turned them to the Union Reserve Life Insurance Company in 1933. We used a \$50,000 mortgage of Mr. Waddoups and deeded him some property. Part payment of the insurance company. I can't say the exact amount of cash we paid him in addition. We paid \$110 a share for the life insurance company stock. The option contract price was \$150.00. We withdrew the Waddoups \$50,000 from the assets of the corporation and substituted mortgages and cash that we had in our own treasury. The mortgages that were increased were part of the assets. The reason the amount of the notes and mortgages were increased was to increase the assets of the life company. The increase was based upon independent appraisals that were filed with us and upon the testimony of Daniel Grant in the Federal Court in the Phelps-Dodge case. That was in the fall of 1935.

Thereupon a document was marked Defendant's Exhibit A. G. for identification and two files were marked respectively defendant's Exhibits A H and A I for identification.

The Witness: These are the mortgage records that I referred to when I said the appraisals were placed in the mortgage pouch. This is the file I had reference to, Defendant's Exhibit [513] A G. The land in that is in the name of George H. Cornes. It is the land he mortgaged. There are

(Testimony of Raymond F. Marquis.)

written appraisals in the file dated January 26, 1934 relating to the land covered by the mortgage which Mr. Cornes gave.

Thereupon defendant's Exhibit A G for identification was offered in evidence, to which objection was made by counsel for the plaintiff and which objection was by the court sustained and to which an exception was duly taken and entered in the record.

Thereupon defendant's Exhibit A H and A I for identification were offered in evidence, and objection being made the offer of the two exhibits was withdrawn.

The Witness: Defendant's Exhibit A H for identification is a mortgage, a record executed by himself as trustee to the State Securities Corporation. That record was kept in the State Securities Corporation files until it was turned over to the Union Reserve and was kept in the regular course of business. Defendant's Exhibit A I for identification is a mortgage executed by George Cornes, Trustee, to the State Securities Corporation. It was later turned over to Union Reserve. It was kept in the usual course of business and the records therein relate to the mortgages of land in Yuma County.

Thereupon Defendant's Exhibits A H and A I for identification were offered in evidence, to which objection was made by counsel for plaintiff, which

(Testimony of Raymond F. Marquis.)

objection was by the court sustained and to which an exception was duly taken and entered in the record.

The Witness: At the time the amount of mortgages were increased, we had owned the property from 1930 to the date of the mortgage 1936. I had frequently been on the land and knew its value. It was worth from between \$1200 and \$1500 per acre. These mortgages were not increased in pursuance of any scheme or device in my own mind entertained or formed in connection with any scheme or device formed between me and any of the other [514] defendants to cheat and defraud anybody by the use of the mails nor in any other manner nor were they given in pursuance of any agreement or conspiracy entered into between me and any of the other defendants or any person to use the mails for the purpose of defrauding anyone. The 19,022 shares of stock shown by Government's Exhibit No. 36 in evidence as of June 30, 1937 was all of the stock that was issued and outstanding at that time. It was issued out of the 50,000 shares allocated to the incorporators, but the rest of the stock had not been issued. Stock out of this 50,000 shares could only be issued with the permission and approval of the Corporation Commission. Commission's order was that the stock was to be held in escrow and issued only upon their order. The number of shares outstanding was not put in the statement in pur-

(Testimony of Raymond F. Marquis.)

suance of any device or artifice existing in my mind or by agreement with any of the defendants or any other person to send the statement through the mail for the purpose of defrauding anyone. It was not put out for the purpose of defrauding anyone under any circumstances. It was not put out as a result of any conspiracy between me and any of the other defendants or all of them or any other person with intent to use the mails to defraud. It was a fact as it existed at that time.

Thereupon the document was marked Defendant's Exhibit A G for identification.

The Witness: The four papers, Defendant's Exhibit A G 1 for identification are appraisals for the property mortgage of the Yuma grapefruit land. They were in my possession in the office. They were filed with the mortgages. That is the Defendant's Exhibit A G for identification. Since 1938 I do not know in whose possession they have been. They were turned over to the State Department. Thereupon Defendant's Exhibit A G, being appraisals identified by the witness were offered in evidence for [515] purpose of showing good faith on the part of the defendant in increasing the amount of the mortgages complained about in the indictment, to which offer an objection was made by counsel for plaintiff and which objection was by the court sustained, to which ruling an exception was duly taken and entered of record.

(Testimony of Raymond F. Marquis.)

The Witness: I am familiar with the matter and enclosure marked Government's Exhibit 31 in evidence. Prior to June 7, 1937, the date of the letter in Exhibit 31, I was not acquainted with Guy J. Baker. I never met Mr. Baker and never went to his home in Casa Grande. I know that the stock books show five shares of stock were issued to Mr. Baker. The letter marked Government's Exhibit 31 in evidence was not put in the mail to carry out any scheme or device to defraud which existed in my mind at that time or which had been entered into between me and any of the other defendants or all of them or any other person nor was it mailed in pursuance of any conspiracy entered into theretofore or thereafter between me and any other person. I never saw Mr. Baker until I saw him on the witness stand. I met Mr. A. E. Simmons of Casa Grande in the office. I never was at his home. I never sold him any bonds, stock or insurance. I had some conversation with him regarding the exchange of bond for stock. The form letter marked Exhibit 32 in evidence was prepared in the office of the Union Reserve Life Insurance Company. The Union Reserve Life Insurance Company statement was prepared in the office. Dunne's report was furnished from our statement on a form sent by them when acquiring such knowledge. From the office we furnished the figures. The figures in Dunne's report and in the general report of the

(Testimony of Raymond F. Marquis.)

life insurance company are correct as shown by the books of the company. The letter and the enclosures to H. E. Simmons was not mailed in pursuance of any scheme or device to defraud existing in my mind at that time or prior thereto or by any agreement with any of the other defendants or any other person, nor was it mailed in pursuance of any [516] conspiracy. I have seen Government's Exhibit 33 in evidence. It was mailed from the State Securities office. The correctness of the figures in the enclosure on the Union Reserve Life Insurance Company report are correct. I have seen Government's Exhibit 41 in evidence. That was mailed to Mrs. Bonar from our office. Government's Exhibit 33 was not mailed in pursuance of any scheme or device to defraud between me and any other person nor in the carrying out of a conspiracy to use the mails to defraud. The letter marked Government's Exhibit 41 was not written and placed in the United States mail in the carrying out or furtherance of any scheme or device to defraud which existed in my own mind or between me and any other person. I first met Mrs. Bonar on a trip to Cananea. That was after we traded for the grapefruit land. I met her at the hospital in her office. I think I met her twice. I never represented anything to her about the value of the stock. I never told her anything about a dividend being paid on the stock. I have seen Government's Exhibit 34 in evidence. It was mailed

(Testimony of Raymond F. Marquis.)

from the office of the State Securities Corporation. It was not mailed in connection or furtherance of any scheme or device to defraud anyone by use of the mails or otherwise existing in my mind or existing between me and others by agreement. I have seen Exhibit 35 before. I had no acquaintance with Gerald Palmer, the man to whom the letter marked Exhibit 34 was addressed. I had seen him. I had never sold him any stocks or bonds nor had any public transaction with him. The letter and enclosures marked Government's Exhibit 35 in evidence addressed to Mr. and Mrs. W. H. Etz, Yarnell, Arizona was mailed from our office. It was not mailed for the purpose of carrying out any scheme or device to defraud which existed in my mind or which had been entered into between me and any other person. It was not mailed to further any conspiracy to defraud by use of the mails. No such conspir- [517] acy ever existed during the life of these companies between me and any other person. I heard Mrs. Etz testify. I first went to the Etz home before September 27, 1937. I went by myself. She had given some stock in the Arizona Light and Power Company in exchange for stock of the State Securities that is to sell the Arizona Light and Power Company stock and purchase so many shares of State Securities Stock. I drove up to tell her that it would take some time to have the certificate exchanged. At that time she and her husband men-



(Testimony of Raymond F. Marquis.)

tioned they would like to have some additional shares of State Securities Corporation. I first got acquainted with Mrs. Etz in 1933 just after we were opening the Union Reserve office. She was a stockholder in the old First National. She came to the office to see me about that. She came to see what was going on. I had some conversation with her but I don't remember who else was there. No one participated in it other than Mrs. Etz and myself. She said she had heard the First National had been sold and was insolvent. I told her of the present set-up and she could either retain her stock in the First National or exchange it for State Securities Stock. We told her we wanted the State Securities Corporation to own the life insurance company in full. She exchanged her certificates. She had twenty in the life insurance company and we gave her one hundred shares in the State Securities Corporation for that. At the time I went to her home in 1937, she and her husband decided they wanted some additional stock. I don't remember who I got the light and power stock from. I think Mr. Hamilton brought it in. Mr. Hamilton brought in a mortgage or a deed to see if a loan could be had for the purpose of purchasing stock. We couldn't handle it. I don't think I was with Mr. Hamilton at the Etz home when he got the light and power stock. I judge it was about seven o'clock in the evening when I went there. I was by myself. I had some con-

(Testimony of Raymond F. Marquis.)

versation [518] with Mrs. Etz about the purchase of stock, but I did not tell her that the State Securities Corporation had paid a dividend on the stock and I did not tell her that the State Securities Corporation would pay a seven per cent dividend after the first of the year 1938. I never at any time during any conversation with Mrs. Etz told her that the State Securities Corporation stock had paid a dividend or that a dividend had been voted to be paid. I told her that life insurance companies successfully managed earned and paid very fair and very good dividends. I showed her Best's Life Insurance Report for 1936 which is defendant's Exhibit G for identification. It is a standard work on life insurance companies and reports their statements. I showed her the reports on dividends paid by various companies. I told her we could not pay in this small territory the dividends the records showed had been paid, but under normal conditions we should pay a satisfactory dividend, that it would take a little time for us to get our business on the books. I was present with E. G. Hamilton at the Etz home. I don't remember whether it was before or after that evening call. That was the first time I met her at her home. I was not present with Mr. Hamilton on the 24th of December of that same year. The Arizona Light and Power Company stock was sold through our office. The amount set out in Government's Exhibit 35 in evidence was the gross proceeds we received. I think it included the divi-

(Testimony of Raymond F. Marquis.)

dividend or interest earnings up to the date of sale. I don't remember the number of shares. Mr. Hamilton did not in my presence or hearing tell Mrs. Etz that the State Securities Corporation had paid a seven per cent dividend. He did not tell her in my presence or in my hearing that a seven per cent dividend had been voted by the record on the State Securities Corporation stock. He did not tell her in my presence or hearing that a cash of any per cent, five, seven or any other per cent would be paid by the State [519] Securities Corporation after the first of January, 1938. I never mentioned at any time to her as a fact or statement of fact that a dividend had been or would be paid on the State Securities Corporation stock. I prepared the letter and enclosures marked Government's Exhibit 45 in evidence and caused it to be mailed to Mrs. Etz. That was after I had exchanged her First National Life Stock. The letter written to Mrs. Etz at Benson was not written by me and deposited in the mail in the carrying out of any scheme or device to defraud which existed at that time in my own mind or which had been entered into or was existing at that time between me and anybody else to use the mails to defraud any person or to defraud any person in any manner nor was it done in pursuance of any conspiracy to use the *mails* to defraud.

Government's Exhibit 54 in evidence was mailed out of the office of the State Securities Company. I

(Testimony of Raymond F. Marquis.)

was not acquainted with Mr. Link at that time. I never sold him any stock or bonds in the State Securities Corporation. That letter, Government's Exhibit 54 in evidence was not written and placed in the mail in furtherance of or in carrying out of any scheme or device existing in my own mind or which had been entered into between me and any other person to cheat and defraud anybody or to use the mails to cheat and defraud anybody. Government's Exhibit 49A in evidence is a carbon copy of a letter which I wrote. Government's Exhibit 48A in evidence is a carbon copy of a letter I wrote. The letter of which Government's Exhibit 49A is a carbon copy was put in the mail. That letter was not put in the mail in the carrying out or the furthering of any scheme which existed in my mind or which had been entered into between me and the other defendants or any other person to defraud anybody by the use of the mails. It was not mailed in the furtherance of any conspiracy. The letter of which Government's Exhibit 48A in evidence is a [520] carbon copy was dictated and mailed from my office. The letter was not mailed in the furtherance of or carrying out of any scheme or device to defraud anybody of anything existing in my own mind or having been entered into between me and any other person nor was it placed in the mail in the carrying out of any conspiracy to use the mails to defraud.

(Testimony of Raymond F. Marquis.)

I believe I gave Daniel Grant a copy of Government's Exhibit 36 in evidence, the combined statement of the two companies. I went down with Mr. Hamilton to look after some life insurance business and called on Mr. Grant at his home. He was looking after the grapefruit land for us. I think Mr. Hamilton went out with me. I handed Mr. Grant the statement and we sat down and went over it item by item. Mrs. Grant came in and I went over it with her. Mr. Grant bought some stock in the State Securities but he never paid us any money. We hired him to look after the grapefruit land and he was to take part of the salary in stock. He never did put in any cash. A reserve was set up for the payment of the bonds issued by the State Securities. The bonds were purchased for \$750, payable \$150 per year for five installments. \$150 was to be paid at the time the bonds were sold. The other paid \$150 per year. We took a note for the deferred payments. These notes were put in the assets of the State Securities Corporation. \$38.62 of the first payment was put in the reserves. The rest of the first payments was an expense loading which governed the cost of the sale of the bonds and other expenses. [521]

The reserve of Thirty-eight dollars, together with \$150.00 for each of the next four years, would earn enough in addition to the money itself to retire the bond at a thousand dollars in ten years. The White-Kincaid matter referred to in Government's Ex-

(Testimony of Raymond F. Marquis.)

hibit 42 arose in this manner. Kincaid had a \$20,000.00 life policy written in 1931 on which he had paid the premium of approximately \$2,000.00 a year. He was teaching school at Tolleson. The policy was two years old, with no surrender value. It had a reserve set up which was intact, but didn't provide for the return of any cash to Kincaid. He *quite* teaching school to enter the insurance business for a competing company. He went to his friend White, who was principal of the school at Scottsdale. White held a bond. As a result of that meeting, White and an attorney, who was an accountant, came to the office about 5:00 o'clock one evening. They informed me they wanted the books of the company. They said all of them. I told them they could come and examine the books any time, but could not take them away from the office. They said I could give them all they wanted then, it was a list of the policyholders, the stockholders, so we can contact them. They refused to state why they wanted these things. I did not deliver the books to them and subsequently there was legal action filed in the matter. The litigation was subsequently settled. That is what I was talking about in the letter to Mr. Cornes, November 22, 1934. What I referred to in the letter, Government's Exhibit 43, to Mr. Cornes was the fact that these people who had caused us trouble were asking members of the legislature to obtain for them what they wanted, that is, a list of policyholders, stockholders and an audit of

(Testimony of Raymond F. Marquis.)

the books, which we didn't fear but we objected to giving out lists of policyholders and stockholders. Government's Exhibit 46 is the copy of a letter I wrote to Mr. Cornes who had written asking whether or not a block of stock could be issued and sent up. That [522] there was a broker who thought he could sell a number of shares if he had the stock to deliver immediately. In reply I told him that we had to keep everything in fit shape and could not do a thing of that kind. The Wolfe case mentioned in Government's Exhibit 47, referred to a man by the name of Wolfe who had applied for \$10,000 insurance. His application did not state his entire occupation, so we investigated and found he was employed only part time. That it was *to* much insurance for such an application. We hesitated to issue the policy. The original application was in June. My brother, Harry Marquis called upon the man twice to see if we could not get the application cut down. He agreed to come into the office. He was examined by the medical examiner about September 1st. His application was declined and his note returned to him. He had given it for the premium. The next February he was killed and a suit was started against the company on the ground of negligence in declining the application. We received a directed verdict in that case. The executor of his estate brought suit for damages in the amount of \$10,000 and it was settled and dismissed. Government's Exhibit 44 correctly states the facts as to

(Testimony of Raymond F. Marquis.)

the remittance from Mr. Cornes and the payment of accounts for him. The money he sent, \$582.49, came from the sale of stock. In Exhibit 44 in evidence, my reference to the legislature meant that the members were being urged to assist in obtaining lists of our policyholders and anything that would hurt the company. Any investigation of a young company, no matter what the condition, is injurious. That was the cause of my concern. The letter was principally for gingering up Mr. Cornes in the production of business. What I meant by being really sorry of the requirements was that it would be double work because we had to do the same things again in March when we prepared the annual statement. I do not remember if I ever saw Government's Exhibit [523] 40 before. It is possible I did. The letter states in effect a plan we had in operation. We started selling bonds in 1929, or 1930. At first payments came in very well, but as the depression moved on in 1931 and 1932 it was impossible for us to go on and depend on organizing the life insurance company on that basis. We did not forfeit the bonds for failure to make payments. Instead of cancelling the bonds we worked out a plan that Mr. Cornes, myself and Mr. Harry Marquis, would donate our personal stock and exchange that stock dollar for dollar for all moneys paid on the bond. If you had a bond we would say to you, we would like to have you go on and pay the bond, if you can't do that here is the stock in the company for what



(Testimony of Raymond F. Marquis.)

you have paid in and we took up the bond from the stockholder. The notes were cancelled or returned to the subscriber. L. J. Hall was a subscriber for stock and a director of the company. He bought 600 shares of stock in the beginning. It was issued to him. Exhibit 13A in evidence is the stock ledger account of L. J. Hall. The stock ledger sheet shows that there has been a good many shares of stock issued out of Mr. Hall's stock. The arrangement I had with Mr. Hall was that we might need some stock because we had not yet received from the department a permit to issue any additional stock, or at least, not enough to take up the bonds of the State Securities Corporation. I ask Mr. Hall if I could use some of his shares. I didn't know how many, to be replaced when the final settlement came. He said that would be all right. I ask him to bring in his certificate, but he did not bring it. I ask him several times. I don't know for what purpose and for whom all of the stock was issued out of Mr. Hall's certificate. Mr. Hall subscribed for other stock, deposited his check for the amount of stock that was to be issued when the permits and the operation would permit us to issue it. He had a running account, both with the company [524] and with Mr. Cornes, my brother and myself. He borrowed money from the companies. He bought a fractional interest in Mr. Leavitt's stock and an one-eighth interest in the grapefruit property. The grapefruit property was held by me and Mr. Cornes

(Testimony of Raymond F. Marquis.)

as trustees. We gave Mr. Hall a contract showing his interest in the property. We gave it to Mr. Hall and left a copy in the files. The Leavitt stock was not issued to Mr. Hall because we had a running account. He never paid a cent toward the maintenance of development of the grapefruit land. We took care of that. When everything was accomplished a settlement was to be made and everything cleaned up. No stock was issued to Daniel Grant because he was paying for it by taking care of the grapefruit land and he wanted the stock to accumulate. He never did request a stock certificate. Government's Exhibit 54 clearly states the *situation* in reference to the Link stock. Mr. Taylor wrote to the office as I recall asking for a loan on his bond after we got the life insurance company. The funds of States Securities had been set aside according to the bond to furnish capital, reserves and surplus for the life insurance company and were not available for a loan. I met Mr. Taylor in his office. We talked the matter over and he was satisfied that no loan value existed at that time. He wrote in twice after that concerning the loan and each time my brother or Mr. Cornes called on him. The last time he wrote in Mr. Hamilton called on him. We told him we had allocated the funds to furnish a capital reserve and that no loan value existed. All I know about the Mrs. Bosch case is what came to me from Mr. Bosch or the salesman. [525]

(Testimony of Raymond F. Marquis.)

I think Mrs. Bosch paid for her bonds by stock in the First National Building and Loan. I called at her home a month or six months after she had received her bonds. She later filed an action against the company and the officers after she had exchanged her bonds for stock. We disposed of the suit by agreeing to pay her a certain amount each month toward buying back the stock. She was represented by Mr. O'Brien and Mr. Hilkert. They represented the plaintiffs in the other actions filed against us. Dr. Ellis died after the incorporation of the State Securities Corporation. Mr. Cornes, my brother and myself bought Dr. Ellis' stock from the estate. Judge Flanigan died and I think his stock was transferred to Mr. Fields. Mr. Leavitt died and my brother, Mr. Cornes and myself and Mr. Hall bought that. Some of Mr. Kerby's stock was used in exchanging for stock in the Kerby Investment Company. The balance was bought by Mr. Cornes, my brother and myself. Eventually we three owned all of the 50,000 shares, except the interest Mr. Hall had and Mr. Fields' stock. That is, we owned all except such as was outstanding or had been sold or transferred to other people. All of the remainder of the stock which was not issued belonged to us. The reason I used the balance sheet of the life insurance company as of December 31, 1936 in Government's Exhibit No. 36 in evidence is because the statute requires that in publishing any statement pertaining to the assets and lia-

(Testimony of Raymond F. Marquis.)

bilities of the company, it must conform to the last statement filed with the Corporation Commission. The four books marked Exhibit No. 7 are the annual reports which we filed with the Corporation Commission. In the 1936 report, Mr. King Wilson did the actual figuring of the actuarial computations. I made a recheck. He did his work under my direction. The actuarial figures were arrived at by taking the net present value of all outstanding [526] policies and deducting the reinsurance reserves from that. We used the American Experience Table of Mortality in figuring the reserves. We figured reserves in this way: To begin with, the American Experience Table of Mortality starts at age 10, with a given 100,000 lives. We used the age 35 as the average in all the companies. Out of that 100,000 we find that at the age of 35 there would still be living 81,832. During the years between the ages of 35 and 32, 722 people died. Actuarial computations in premiums are based upon the assumption that premiums are paid at the beginning of the year, death claims at the end. So we must have then to pay all debts that occurred that year \$722,000.00, if each person is insured for \$1,000.00, but that is not due until the end of the year so we don't need \$722,000.00 at the beginning at the year, but the present value of that, which if I remember rightly, the present value of \$1.00 is .966. Therefore, we would only need the fractional part of \$722,000.00. Now, if I make no mistake, that will be \$697,452.

(Testimony of Raymond F. Marquis.)

Divide that by the number of people living at the beginning of the year, because premiums are presumed to be paid then, and we have a net premium of \$8.64. That is the cost of insurance according to the American Experience Table. Now the theory of all reserves is based upon the factor that \$8.64 paid in at the beginning of the year will be consumed each day theoretically until the end of the year, when there will be no legal reserve remaining—no money at the end of the year. To make our statement, we are required to take what we call the “Mean reserve”, which is the reserve for the mid-year, or \$4.62. We have to calculate the mean reserve because some people take their insurance January 1, some may not take theirs until December 31, hence the first premium will be nearly all used up, the last one almost wholly intact. That sort of [527] computation and bookkeeping is entirely different from commercial bookkeeping. The actuarial reserves are figured and included in the 1936 statement and they are correct as they appear from our books. The actuarial figures are properly prepared for the years 1933, 1934 and 1935. The business done in the State of Arizona during the year appears in each one of these volumes. Those are the figures upon which the actuarial reserves were figured. There is another factor that enters into it in the assets. The due and deferred premiums—that is on page 4. It is a non-ledger asset. That means that a policy taken December 1 or December

(Testimony of Raymond F. Marquis.)

15 would have a certain length of grace. We have to give 30 days in which the premium may be paid after it is due. The required actuarial premium is set up as an asset, provided we have included in the legal reserve or liability column the legal reserve on that particular policy. We included that in our legal reserve and that is the reason they are shown in the report. When we exchanged stock for bonds we exchanged that stock not only with those who were delinquent, but those who wanted to exchange bonds which were fully paid up. I have never at any time either on or before December 31, 1929, or at any time from that time down until January 1, 1938, or at any other time, entered into a conspiracy conspiring, combining and confederating and agreeing with any other person to use the mails to defraud anyone. I never at any time within the times specified in the indictment, or at any other time, either before or after, agreed or formed in my own mind alone or in conjunction with any of the defendants, or all of them, or any other person any scheme or device to defraud anybody by using the mails or in any other way. I never did enter into any conspiracy with any person to use the mails to defraud as set forth in the sixth count of the indictment. I never did [528] any of the things charged in the sixth count of the indictment in pursuance of any conspiracy or agreement to use the mails to defraud, entered into between me and the defendants, or any of them, or any other person.

(Testimony of Raymond F. Marquis.)

I did not draw \$90,935.70 from the two companies for myself. I did not draw check No. 8683 for personal use. It was for the Union Reserve Life Insurance Company. I didn't draw check 8487 for personal use. The check of \$500.00 to H. H. Shoup was for the taking up of Mr. Shoup's paid up bond of \$1,000.00. That \$500.00 was used for the making of the \$1,000.00 face value of the bond. The reason for that was Mr. McKesson, who attended to Mr. Shoup's business, required a cash payment of the specified amount in settlement of the bond. I found other checks on Mr. Hair's work sheet charged to me, which was money drawn and expended for the company. One to the Southern Pacific Railway Company of \$95.00, one to a Mr. Skipper, bonds or warrants purchased. I have had no opportunity to examine all of the checks. I found one of \$600.00 that was charged to my account that was paid to the State Department for taxes and fees. There were probably 25 or 30 more that were used for the payment of printing and supplies. There was never any stock sold which was to be called treasury stock of the State Securities Corporation. It was all stock allocated to the incorporators. When the stock was sold the money would be deposited to the State Securities Corporation. It was entered under the regular accounting system in such cases. There was no record kept to show that the money belonged to us or was for the stock which we owned. We carried a running account in which we were debited

(Testimony of Raymond F. Marquis.)

with withdrawals, but not credited with any payments into the State Securities account. There was money went into the Union Reserve Life Company account through the State Securities Corporation. There was an account carried [529] between them. We made an application for permit to issue stock of the State Securities Corporation. The property described in Defendant's Exhibit AH-1 for identification is the farm units in P and Q Yuma, known as the grapefruit property. I filed these papers in the mortgage file when I received them.

Thereupon, defendant's Exhibit AH-1 for identification was offered in evidence and, without objection, was marked Defendant's Exhibit AH-1, and counsel for plaintiff withdrew objections to Defendant's Exhibit AG-1 for identification and it was thereupon accepted in evidence and marked Defendant's Exhibit AG-1. Defendant's Exhibit AG-1 and AH-1 abstracted to the issue are:

#### DEFENDANTS' EXHIBIT NO. AG-1

Being appraisals of Farm Unit M and Farm Unit N, the grapefruit land described in one of the mortgages. The appraisals consisting of four different letters, one dated January 26, 1934, appraising the land at \$1,200.00 per acre, signed by George E. Carr, Superintendent packing house, Yuma-Mesa Fruit Growers Association. One dated January 27, 1934, appraising the land at \$1,300 per acre, signed G. C. Morse, Foreman, citrus orchard. One dated



(Testimony of Raymond F. Marquis.)

January 26, 1934, appraising the land at \$1,200 per acre, signed L. R. Helfrick. One dated January 26, 1934, appraising the land at \$1,200 per acre, signed by Daniel Grant.

#### DEFENDANTS' EXHIBIT NO. AH-1

Being a folder containing a warranty deed from R. F. Marquis, Trustee, R. F. Marquis and Kate H. Marquis, husband and wife, H. S. Marquis and Alexa Whitmire Marquis, husband and wife, L. Jo Hall and Helen Hall, husband and wife, and George H. Cornes and Joanne Cornes, husband and wife, to Roy B. Rummage, liquidating agent for the Arizona Corporation Commission in the [530] affairs of the Union Reserve Life Insurance Company, a corporation, conveying farm units, N, P and the South half of Q, according to the farm unit plat in Section 6, Township 10 South, Range 23 West of the Gila and Salt River Base and Meridian, Maricopa County, Arizona. Realty mortgage covering the same land from R. F. Marquis, trustee, to State Securities Corporation for \$17,500.00. Realty mortgage from R. F. Marquis, trustee, covering the same land, to State Securities Corporation for \$21,500.00. Trust agreement between George H. Cornes, R. F. Marquis and Kate H. Marquis, H. S. Marquis and Alexa Whitmire Marquis, L. Jo Hall and Helen Hall, his wife, covering the North half of Farm Unit Q. Trust agreement between George H. Cornes, Joanne Cornes, R. F. Marquis, Kate H. Marquis,

(Testimony of Raymond F. Marquis.)

H. S. Marquis and Alexa Whitmire Marquis, covering Farm Unit M and N. Assignment of mortgage from Union Reserve Life Insurance Company to State Securities Corporation, securing note for \$17,500.00, satisfaction of mortgage executed by R. F. Marquis, trustee. Assignment of mortgage, State Securities Corporation to Union Reserve Life Insurance Company, securing \$17,500.00. Promissory note executed by R. F. Marquis, trustee, to State Securities Corporation, September 7, 1936, for \$21,500, due 10 years after date, and assignment of note and mortgage securing the same to Union Reserve Life Insurance Company. Copy of trust agreement covering Farm Units N, P and the South half of Q. Cancelled note for \$17,500.00, dated March 29, 1933, payable to State Securities Corporation, executed by R. F. Marquis, trustee. Appraisal of Farm Units N, P and Q, by Daniel Grant, February 7, 1931, appraising the land at \$1,000.00 per acre and appraisal of the same land by J. H. Lepasky on the same date, appraised value \$1,200.00 per acre. [531]

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The Witness: The practice of writing up the minutes was, wherever possible to have regular formal meetings by everybody, the minutes of which were to be reported. Where Mr. Cornes, Mr. Harry Marquis and other members of the executive committee were away on business, if a question had to be determined, action had to be taken, the minutes

(Testimony of Raymond F. Marquis.)

were written up and then discussed and taken up with them when they returned. It was done when all members of the executive committee were not present at the time the action was taken. Those were cases in which I had to exercise my judgment. I wrote up a record of the situation so that at any time we could determine what was done. The minutes were not always typed on the dates on which the meetings were held. The data was given to the girl, sometimes written out in full and sometimes from notes taken and dictated at a later date. The minutes of meetings of the directors were transcribed and typed into the book at a later date. Whoever acted as secretary kept the minutes in lead pencil or pen and ink, and then sometime later they were transcribed in the book. That is also true of stockholders' meetings. At the stockholders' meetings some were present in person and some represented by proxies. It was our custom when stock was sent out to send a receipt for stock and a proxy for the number of votes of the stock, have that signed and returned. Some proxies were given to Mr. Cornes, some to myself and I think some to others. These were the proxies mentioned in the minutes of the stockholders.

#### Cross Examination

By Mr. Whitney:

The Witness: Mr. Hamilton came with the life insurance company in August, 1935, and a day or two after he was employed as life insurance sales-

(Testimony of Raymond F. Marquis.)

man he took up the sale of stock of the company for the State Securities. I have examined Defendant's Exhibit H for identification and Defendants' Exhibit AJ for [532] identification. I gave them to Mr. Hamilton before he was employed with the company. [533]

Thereupon Mr. Whitney offered in evidence defendant's Exhibit H and AJ for identification, to which objection was made by counsel for plaintiff on the ground that it was improper cross examination, which objection was by the court sustained and to which an exception was taken and entered in the record.

The Witness: Exhibit 13 for identification shows the Helen Green Etz transaction. It shows that in May, 1933, certificate No. 168 was issued for one hundred shares of the stock of J. Jo Hall to Helen G. Etz in certificate No. 871. That was a transfer. On September 27, 1931, certificate 871 for 250 shares was issued to Helen G. Etz. The record shows that the Etz certificate was issued for 100 shares on May 1, 1933; that on September 27, 1937 that certificate was cancelled and included with an additional 150 shares and apparently sold to her on September 27. Mr. Hamilton sold her 50 shares on the 16th of September, and I later sold her another 100. That, together with the hundred shares she had, made up the 250 shares. Government's Exhibit No. 2 in evidence, the Articles of the First National Life Insurance Company provide that the board

(Testimony of Raymond F. Marquis.)

of directors and trustee shall be elected from among the stockholders. I don't believe Mr. Hamilton ever owned any stock in the Union Reserve Life Insurance Company. Section 10 of Article 3 Government's Exhibit 26D provides that no person shall be eligible to become a director unless he holds at least one share of stock. I don't know of Mr. Hamilton owning any stock in State Securities Corporation up to February 7, 1938. Mr. Hamilton was elected an officer of the Union Reserve Life Insurance Company on that date. I would say the minute book is correct. So far as I know Mr. Hamilton was never elected a member of the board of directors or an officer of the State Securities Corporation. The minutes reflect the exact dates of the minutes of the stockholders and the directors. Also the minutes of the executive committee reflects the date. [534]

#### Cross Examination

By Mr. Wilson:

The Witness: The letters and documents are those I furnished to Mr. Cornes to be displayed to the public and relied upon by him in making sales. The document was marked exhibit AK for identification. I think I prepared the letter marked Government's Exhibit 54 in evidence addressed to H. F. Links at Prescott and bearing the signature of George H. Cornes. I don't believe it is his signature. It is not my handwriting. I prepared the letter.

(Testimony of Raymond F. Marquis.)

Cross Examination

By Mr. Flynn:

The Witness: The MCM account was a sort of catch all account that covered items that could not be handled, credited or charged in other accounts. Generally speaking, the Marquis, Cornes and Marquis books record the sales of the agency department of the State Securities Corporation. In connection with other transactions an agency of the State Securities Corporation. They are not necessarily a part of the records of the transactions of the State Securities Corporation. They receive the transactions of the Marquis, Cornes and Marquis agency in its relation to the State Securities Corporation. The State Securities part would be the State Securities records but not the Marquis, Cornes and Marquis. I was one of the organizers of the State Securities Corporation and I paid approximately \$10,000 for the cost of that organization. That included all fees paid to the State Department, licenses, printing, organization of agency force, travelling expense until the State Securities Corporation could take care of the expense itself, the expense of actuarial data various other things and cash advanced. A memorandum record only was kept of that because we were just building and the money put in. We kept very little track of how much anyone paid for certain items. There was no regular account kept on the books of the State Se-

(Testimony of Raymond F. Marquis.)

curities Corporation. There was a book kept, a [535] private record as between my brother and myself because we were the ones who put in the money. I don't know just where it is now. The first fee paid to the Corporation Commission approximated \$600.00. That was for the taxes on 2500 bonds. We secured the permit but it only extended for the term of one year. It ended in June and we only sold a fractional part. Hence the balance was lost. It was paid in cash by myself. That was before we had opened up our book accounts while we were securing our permits. We got the permit and charter about the same time. It was all paid at once. Government's Exhibit 1 was the first document we received from the Corporation Commission. It is the certificate of incorporation. The first permit we got was to sell common stock at \$10.00 a share. It was no par stock and 2500 bonds. That was dated December 17, 1929. We had received our charter December 9, 1929. We could not apply for a permit to sell until we were authorized to do business. I would say we continued to advance money to the corporation for the first five or six months. No account or record of that was made in the corporate books of account. I think there was a memorandum filed with the company. The reinsurance carried by the company lapsed a couple of times and was reinstated. The last time I believe was in December. It lapsed in September or October then was reinstated and then lapsed again. The letters in

(Testimony of Raymond F. Marquis.)

the file would indicate. It had not lapsed prior to 1937. I could not give you the approximate date. It was in force at the time of the sale of stock to Mrs. Etz September 27, 1937. I don't know if it was in force on the 24th day of December, 1937 or the 29th day of December, 1937. The reinsurance premiums were not all paid in 1937. We operated at a loss that year. We discovered it in March, 1938. The insurance company kept a set of books showing their operating expense. I am an accountant and understand setting up books. The books of the Union Reserve Life Insurance [536] Company were kept under my direction by Mr. Wilson and Mrs. Hill. It was not possible to determine from the books from month to month whether or not the company was making money or lost money. It was impossible because the reserves determine the liability of the company. We knew in 1937 we were having financial difficulties that we were losing business and not getting as much as in the previous year. It began to be noticeable early in the year. A lot of insurance policies lapsed in 1937. People failed to pay their premiums. I could not tell you how much lapsed in 1937 for non payment of premiums. I never did make a complete determination. I would estimate about a million dollars. Before that we had a little over \$5,000,000 in force. That condition was developing in September, 1937 and October and December. It developed to the extent we didn't have any money to pay reinsurance



(Testimony of Raymond F. Marquis.)

premiums. The figures in Government's Exhibit 33 in evidence by our actuarial figures are \$105,822.43. That designates the reserve for policies, less the reserve on reinsurance that was set up and \$2645.96. That was the present value of moneys payable to beneficiaries on monthly payments. Both of those figures go into the total liability figure here and that would be partially based on the actuarial figures. The two figures make up the total of \$112,819.00 liability. The figures under assets 8.6 per cent government bonds, stocks, county, state, municipal district obligations and cash items on hand and in the bank \$22,574.50 are not actuarial figures. They are ledger accounts. The figure 52.2 per cent of assets represented by first mortgages made on approved income bearing farms, city homes, business properties on which there was paid to the company credit on December 31, 1936 interest of \$12,000.00, a total of \$140,546.14 is a ledger account. A part of the figures totalling \$263,878.77 are actuarial figures. The premiums due and deferred on which reserves are set up is an actuarial figure and cannot be determined [537] from the ledger or from any books of the company. The net value of the premiums that are due and deferred makes it an actuarial figure, that is the present value. The statement of December 31, 1936 was the last financial statement and prepared by the life insurance company. There was a similar statement published every year up to that time. It had similar but not

(Testimony of Raymond F. Marquis.)

identical items. It had the assets and liabilities, the actuarial figures and ledger accounts. The figures "insurance inventory \$105,065.92," Government's Exhibit 36 in evidence was obtained by getting an appraisal on our business from two different sources. It is not an actuarial figure. It is not what we call a convention blank report where you make a report of your entire assets. Your insurance in force must be evaluated just as if you make an assessment on your farm. The cattle that the farm has grown must be included. If you made a true statement, the value of the insurance is most necessary. Government's Exhibit 36 was to be used just about the way we stood. We mimeographed excess copies so as to have a supply in case we needed them to show our stockholders a true picture of the company. It was not for prospective stockholders. This statement was furnished to the officers and directors of the company. We didn't include the insurance inventory item in our annual statement because the picture of an institution to the stockholders is an entirely different thing than the picture the state requires to be filed for the public. The true picture of the financial condition of the insurance company when looked at from the standpoint of the stockholders is entirely different from the picture of the company as looked at from the standpoint of the Corporation Commission. No other statement used that item of "insurance inventory." This is the statement of the State Securities Cor-

(Testimony of Raymond F. Marquis.)

poration which owned the life insurance company. The reason the date December 31 was used for the Union Reserve Life Insurance Company was because [538] that was the last picture we had, the December 31 statement. We might have employed eighteen or twenty girls and kept our reserves monthly. That would have been impractical. It is necessary by statute to include the last statement published in all literature sent out. I don't know the purpose of it. That is the law as I read it. Any stockholder was privileged and was invited to come in and make any examination and determination he wished. I felt when the statement was prepared on November 26, 1937 that the law required and that I was compelled to base the statement for the Union Reserve Life Insurance Company on the statement of December 31, 1936. That was made solely for the information of the officers, directors and stockholders of the life insurance company. I felt that it was necessary and was the only way of getting a true picture before the persons whose business it was to know. I used the statement of December 31, 1936 because I felt under the law I was required to do so. There was another reason and that was that we could not otherwise get a true picture of the company on that particular date. [539]

That was the only legal way we knew of to prepare the statement. The item of 105,000 was not in the convention form. That is the valuation of the

(Testimony of Raymond F. Marquis.)

business we had on the books. That is the business upon which the inventory item was calculated. The 105,000 does not go to make up the totals in the convention statement, but the business we had on the books on that date does. The \$105,000 could not be taken into consideration in the convention statement, but this is the statement of State Securities Corporation. It is a combined statement. The State Securities owned the stock of the Union Reserve and it was then entitled to take credit for the assets of that company, and the State Securities Corporation statement reflects the value of the business. The State Securities Corporation held the stock in the Union Reserve Life Insurance Company and, hence, owned the business. It is my contention that because the State Securities Corporation owned the stock in the Union Reserve it was entitled to set up as a part of its assets the insurance inventory of the life insurance company. It is not proper to include the insurance inventory in any statement of the life insurance company, and it is not there included in this statement. It is one of the assets of the State Securities Corporation. I think all of the assets of the insurance company, as well as the liabilities are listed in the State Securities Corporation statement. It is not necessary before they can become assets of the State Securities Corporation that they must be assets of the insurance company. I can't tell with-

(Testimony of Raymond F. Marquis.)

out looking at the work sheets just what items belong to each company. We had four million, nine hundred seven odd thousand dollars of insurance in force in 1936, and during 1937 we lost a little over a million. Mr. Canning kept the books of account of the State Securities Corporation. I started the books. Mr. Canning took charge in 1930. [540] From then on until business closed, he was in charge of the accounting. The books of the life insurance company were kept by Mrs. Hill and King Wilson. I had advanced about \$10,000 in the organization of the companies. Some of the money was spent before incorporating the State Securities and some afterwards. Some of them were put in the books of the State Securities company, but not all. The deposit of \$1154.91 was all advanced by me. The \$600.00 check was for cash due to the payment of expenses. Exhibit 18 in evidence is the Marquis, Cornes and Marquis account. The State Securities Corporation received \$1154.91 for its benefit. All of the money does not show here because no record was kept on it. The books show a credit of \$2,462.45 on May 16, to me, and the company is charged with having received it. The \$1904.00 indicates a withdrawal. On the 19th of May it was credited to my account and charged to the company. I did not understand that I was given credit for those advances against the withdrawals from the company on Mr. Hair's work sheets. I understood I was charged with everything

(Testimony of Raymond F. Marquis.)

I withdrew and not given credit for any money I deposited. The girls in the office drew all of the checks. They got their information principally from their own knowledge of the business. If it was a matter of great importance they came to me and asked where to charge it. If they knew where the money went, they charged it as best they could. If it was a matter pertaining to agency or expense in the office, they charged the "MCM" or Marquis, Cornes and Marquis account. I did not receive \$250.00 of check 8128 for my benefit. It was written to R. F. Marquis and H. S. Marquis, and endorsed by us. It shows \$250.00 charged to me and \$250.00 to H. S. Marquis. Check No. 8683 for \$96.00 while charged in part to me personally was spent in agency or some expense in the building of the institution. I have no [541] personal recollection of these items at the time sufficient to explain the items. Check No. 8547 in the sum of \$30.36 marked entertainment, was used to entertain the agents at some meeting we had. That was found in Mr. Hair's work sheets. It was charged to me. The check dated August 11, 1934, payable to Western Union for \$25.00, part of Government's Exhibits 21 and 23 in evidence, was a payment on \$1,250.00 that I borrowed from my daughter. All of those \$25.00 checks were in repayment of the loan. That went in as part of the original \$10,000.00. I don't know what check No. 7406 was for. Mr. Cornes

(Testimony of Raymond F. Marquis.)

never drew any set sum per week. There was a running account with everyone. Business was brought in in the running account as against the commissions earned and to be earned, and any money Mr. Cornes drew was on account. The citrus land at Yuma was paid for with stock of the State Securities Corporation owned by Mr. Cornes, my brother and myself. When that stock was sold for cash, the cash was turned into the State Securities Corporation. I don't think credit was given us for it. It was turned in and a running account established. It was our individual money until we turned it over to the State Securities Corporation and they in turn turned it into the life insurance company. The title to the citrus land was taken in individual names as trustee for the others, that is, Mr. Cornes, Mr. Harry Marquis and myself. Mr. Leavitt was in it for awhile but we bought him out. The expense of maintaining the land and caring for it was paid by Marquis, Cornes and Marquis, but the money was drawn out of the State Securities Corporation bank account. We used the same account. No record was kept distinguishing the amount of money deposited by State Securities Corporation, and the money deposited by Marquis, Cornes and Marquis. The source of revenue of Marquis, Cornes and Marquis was the returns from the grapefruit land and [542] the sale of stock—the Marquis, Cornes and Marquis stock. All of the

(Testimony of Raymond F. Marquis.)

stock sales money went into that account. The State Securities Corporation had no source of income after 1932. They had no source of income other than what was to be earned from the life insurance company. No funds went into the State Securities Corporation from the sale of stock, except it went through the Marquis, Cornes and Marquis account. The Union Reserve Life Insurance Company had to have \$100,000 of capital. We were selling the stock in the State Securities Corporation to raise that fund. While all of the stock belonged to individuals we had dedicated to the organization or building of the life insurance company 50,000 shares. It was allocated to us for that distinct purpose, and when the necessary expenses of sale had been paid, it was used for that purpose. The grapefruit land was bought with the stock, and with the exception of returns from the grapefruit land, the money for upkeep of the land was derived from the sale of stock. It was all funds derived from the Marquis, Cornes and Marquis stock in the State Securities Corporation. There was some 19,000 shares of that stock sold for which certificates were issued. That was what was included in our annual statement as of June 30. There had been no change in the allocation of the 50,000 shares on June 30, 1937. It had not all been authorized to be issued. Government's Exhibit 5 is a permit to sell 500 shares of the non par common stock. There was a



(Testimony of Raymond F. Marquis.)

permit for the issuance of 30,000 additional shares of stock, I believe, in 1933. It was to be held in escrow. Thereupon a document was marked Government's Exhibit 64 for identification. I believe Government's Exhibit 64 for identification is special order 571 from the Corporation Commission. That was issued to the company for the sale of 30,000 shares of capital stock which had been allocated. That was a release [543] authorizing the company to issue 30,000 shares to the persons entitled to receive it from the allocated stock. Thereupon, Government's Exhibit 64 was offered in evidence, and without objection was accepted in evidence, and abstracted to the issue is: [544]

#### GOVERNMENT'S EXHIBIT No. 64

Special Order No. 571 of the Arizona Corporation Commission for release of and permission to deliver stock of the State Securities Corporation, and a carbon copy of the order:

Investment Division

Special Order No. 571

Docket No. 4175-B-2568

In the Matter of the Application for Release  
of and Permission to Deliver Stock of the  
State Securities Corporation.

By The Commission:

Application having been made and good  
cause appearing therefor;

(Testimony of Raymond F. Marquis.)

It is hereby ordered, that the State Securities Corporation, be and the same hereby is authorized to issue and deliver to the persons entitled thereto 30,000 shares of its capital stock, said shares having been held for issue subject to the approval of this Commission in accordance with the provisions of Decision No. 5126, Docket No. 4175-B-2568, dated December 17, 1929.

By order of the Arizona Corporation Commission.

In witness whereof, I, M. C. Hankins, Secretary of the Arizona Corporation Commission, have hereunto set my hand and affixed the official seal of the Arizona Corporation Commission at the Capitol, in the City of Phoenix, this 18th day of July, 1933.

M. C. HANKINS  
Secretary

Approved:

WILSON T. WRIGHT  
Chairman  
JOHN CUMMARE  
Commissioner  
CHAS. R. HOWE  
Commissioner [545]

(Testimony of Raymond F. Marquis.)

Arizona Corporation Commission  
Investment Division

SPECIAL ORDER No. 571

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In the Matter of the Application for Release  
of and Permission to Deliver Stock of the  
State Securities Corporation.

By The Commission:

Application having been made and good  
cause appearing therefor;

It is hereby ordered, that the State Securities Corporation, be and the same hereby is authorized to issue and deliver to the persons entitled thereto 30,000 shares of its capital stock, said shares having been held for issue subject to the approval of this Commission in accordance with the provisions of Decision No. 5126, Docket No. 4175-B-2568, dated December 17, 1929.

By order of the Arizona Corporation Commission.

In witness whereof, I, M. C. Hankins, Secretary of the Arizona Corporation Commission, have hereunto set my hand and affixed the official seal of the Arizona Corporation Commission at the Capitol, in the City of Phoenix, this 18 day of July, 1933.

M. C. HANKINS

Secretary [546]

(Testimony of Raymond F. Marquis.)

The Witness: Under that order the stock was to be issued to Mr. Cornes, my brother and myself. It is not a permit to sell stock to the general public.

Mr. Flynn: Then these other permits I have shown you were the only permits ever, as far as you know, issued by the Corporation Commission for the sale of stock?

To which question the objection was made by defendant Canning that it was not proper cross-examination, it was not charged in the indictment that these defendants, or any of them, sold stock without a permit from the Corporation Commission, and is not one of the things charged in the indictment or set out in the bill of particulars, and was not cross-examination on the question or matter brought out on direct examination, which objection was by the Court overruled, to which ruling of the Court an exception was duly taken and entered of record.

The Witness: When our bonds began to become defaulted, the financial situation got worse from 1931 to 1932 and 1933 I went to the Corporation Department and asked what best to be done. The Corporation Commission itself outlined this method of getting that stock out to the people to whom it belonged. I do not know of any other permits such as Government's Exhibit 5 and 6 being issued. That is my signature on a document which is part of Defendants' Exhibit A, showing filing date of

(Testimony of Raymond F. Marquis.)

December 11, 1929. That application was filed with the Corporation Commission in connection with the request to issue and sell shares of stock in the State Securities Corporation. On the first page is set out the names of the persons to whom stock was allocated and the number of shares. The ownership of the 50,000 shares was in the names of individuals and set out. There was 200,000 shares of non par common stock remaining in the treasury. That is the situation that existed with the exception of the sale of 19,000 shares [547] of that allocated stock June 30, 1937. The mortgages on Yuma land were executed by the individual who held the land in trust for the rest of the owners. The trustee gave the note. The mortgages were carried on the books of the company as mortgage loans and the interest was paid by Marquis, Cornes and Marquis. The money was turned in and it was charged as a running account. At the end of the year there was a balance in the running account, sometimes it was one way and sometimes it was another. The entry in Government's Exhibit 9 in evidence, which appears to be the last entry in December, 1936, indicates that the State Securities Corporation owed the Union Reserve Life \$22,252.27. Included in that item is probably the interest on the mortgages. One year later, December, 1937, the exhibit shows a similar item showing the State Securities Corporation owed the Union Reserve Life \$65,-

(Testimony of Raymond F. Marquis.)

525.54. That would indicate that the State Securities Corporation had drawn that much money in some form or other from the insurance company. In Government's Exhibit 33, under the items of 8.6% held in bonds, the total of \$22,000.00, that included some Home Owners' Loan Corporation bonds. On December 31, 1936, King Wilson was ordered to deduct those bonds on the books of the company. They were in the bank as collateral for a loan. I gave my personal note and the money was turned over to the company. Mr. Wilson, on December 31, was instructed to deduct that item on the books. I did not learn until sometime later that he did not. They were sold the next year and Mrs. Hill was instructed and took them out. The statement reflects some Home Owners' Loan bonds and the statement was right except for the error made by Mr. Wilson. The company did not actually hold the bonds at the time shown in the book. The answer that all of the bonds were in actual possession of the company is incorrect. I made the affidavit on the statement, feeling that it was [548] absolutely correct and it was as reflected by the books, but at that time some of the bonds were up as collateral for a loan at the bank and were not actually in the possession of the company. At the time I called on Mrs. Etz I had Best's Life Insurance Reports. I don't remember for what year. It would be the 1936 edition I guess. Nearly all

(Testimony of Raymond F. Marquis.)

of the men had that book. I showed it to Mrs. Etz and explained about the other companies. I was up there in September twice. I discussed the reports in the book with Mrs. Etz at the time I secured the power company stock. I don't remember whether it was delivered to Mr. Hamilton or myself. We also got a certificate of stock of the State Securities Corporation. That is the time Mrs. Etz and her husband agreed to purchase 50 shares of the State Securities stock. I went back probably a week or 10 days later. I was alone. At that time I had the Best Insurance Reports with me. I don't think I showed it to her at that time. I had the power company stock with me. It had not been sold. Mrs. Etz at that time bought 100 shares additional. I took with me when I left the power company stock with authority to sell it and have issued to Mrs. Etz \$3,000 worth of State Securities stock at \$20.00 per share. I did not go back when the stock was delivered to Mrs. Etz. I think it was mailed to her with a check for the difference. I met Mrs. Bosch casually in her home. That was after she had purchased the bonds and before she exchanged the bonds for stock of the company. I had nothing to do with the exchange of bonds by Mrs. Bosch for stock of the State Securities Corporation. Mr. Conway went to see her alone on his own volition. We had a general program of taking up all of those bonds and exchanging them for stock

(Testimony of Raymond F. Marquis.)

to unify our situation. At that time Mr. Conway was acting as both attorney and salesman for the company. [549]

Mr. Flynn: Who made the settlement with Mrs. Bosch?

To which question the objection was made that it was immaterial, irrelevant and incompetent for any purpose in the case and was pure hearsay, which objection was by the Court overruled, and to which ruling of the Court an exception was duly taken and entered in the record.

The Witness: I think Mr. Fields, through her attorney, made the settlement.

Mr. Flynn: And when was that settlement made?

To which objection was made by defendant Canning that the matter was irrelevant, incompetent and immaterial to every issue in the case, and pure hearsay, which objection was by the Court overruled, and to which an exception was duly taken and entered in the record.

The Witness: I don't remember the date of the settlement—about six or eight months before the company closed. [550]

Mr. Flynn: Q. Do you know how many payments were made to Mrs. Bosch on that settlement?

To which objection was made that this whole line of testimony was irrelevant, incompetent and



(Testimony of Raymond F. Marquis.)

immaterial, hearsay, and had no bearing on any charge in the indictment or mentioned in the bill of particulars, which objection was by the court overruled and to which ruling of the court an exception was duly taken and entered in the record.

The Witness: I do not know who made the settlement. I testified that Government's Exhibit 62, a letter addressed to Mrs. Bonar, July 12, 1934 was dictated by me. In it I said, "While we made ten per cent on our capital stock, it would not be good business to pay it out in dividends." From the true statement of the Union Reserve Life Insurance Company of 1933 and 1934 it shows an increase in surplus of \$10,002.00. That statement is correct in accordance with the books of the company. I don't remember any statement of the State Securities Corporation of that year. As to Government's Exhibit 40, a letter to Mr. Ambler, I would presume it to be dictated by Mr. Cornes, but I do not know. I cannot say whether it was the policy of the company to retire all of the interest bearing bonds and exchange them for stock. There was not a general activity on the part of the salesmen to exchange stock of the company for all outstanding bonds. As a matter of fact, all except a small amount of the bonds were exchanged for stock. That was not done because the bonds provided for a definite payment of interest. It was

(Testimony of Raymond F. Marquis.)

done because we could not get the bonds paid for. The Corporation Commission advised us that it would be the best plan to exchange stock for the bonds instead of bring suits on the notes for the installments. Mrs. Bosch sued us about her stock. The Corporation Commission gave us no advice in regard to bonds which were paid in full. That was a matter for the individual to determine. [551] In Exhibit 40 where it refers to stock allocated and paid for by the incorporators at \$10.00 per share. I suppose Mr. Cornes referred to the 50,000 shares of stock. Independent of what Mr. Cornes says, I would say that the 50,000 shares was paid for at approximately that rate in services and cash. The letter does not state \$10.00 in cash. There was never any effort on my part to keep the affairs of the company from Mr. Cornes or anyone else. I handled most of the dissatisfied stockholders. There was no specific rule governing that. In my letter to Mrs. Bonar where I mentioned the company earning ten per cent, I referred to the Union Reserve Life Insurance Company. She knew the purpose of her investment was for organizing a life company, and the letter plainly tells Mrs. Bonar what we had earned. Mrs. Bonar's stock was in the State Securities Company which was the holding company. We did not file with our application the document signed by J. Elmer Johnson. That was a confidential report made after his examina-

(Testimony of Raymond F. Marquis.)

tion of the company to the Corporation Commission. We didn't make it. Mr. Johnson made an examination of the books of the State Securities Corporation prior to the date of this letter March 10, 1931. I do not know how long prior. It may have been a week. The report shows what he found in his examination.

#### Redirect Examination

The Witness: The company was to be financed by the sale of bonds and the bonds so provided.

#### Recross Examination

A document was marked Government's Exhibit 65 for identification.

The Witness: I do not know when the reinsurance of the Lincoln Life lapsed. There is a suit on now to determine whether it lapsed at all or not. I have examined the exhibit marked Government's Exhibit 65 for identification. The Lincoln National [552] Life Insurance Company cancelled its reinsurance first on October 4, 1937. According to their interpretation it was ineffective until January 9, 1938 when it was reinstated in response to a telephone conversation in which we were told that if certain mortgages were duly assigned the contract would be reinstated. Those were prepared and sent to the company as of that date. On January 28 there is a letter that confirms the net retention on standard risks. According to their con-

(Testimony of Raymond F. Marquis.)

tention from October 4, 1937 until January 18 or 19, 1938, the Union Reserve Life Insurance Company had no reinsurance with the Lincoln National Life Insurance Company. Their contention was based on the failure of the Union Reserve Life Insurance Company to pay reinsurance premiums. I do not know who was in charge of the investment department of the Corporation Commission during the first few years of the existence of *the existence* of the State Securities Corporation. During the years 1930 and 1931 we had considerable dealing with the investment department of the Corporation Commission. It was the department which had jurisdiction of the companies we were handling.

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Thereupon

EARL CANNING

was called as a witness in his own behalf and being first duly sworn, testified as follows:

Direct Examination

The Witness: My name is Earl Canning. I am one of the defendants. I am fifty-three years old and live at 768 East Willetta, Phoenix. I have lived in Phoenix about forty-five years. I started to school here in the first grade. I went through the grammar school and high school. The last year of high school I worked a half day and went to school a

(Testimony of Earl Canning.)

half a day. Since I finished high school I worked for the Arizona Water Company which operated the canals before the United States Government took them over. Then I got a job at the capital as assistant public examiner under W. C. Forster. Then I went to work [553] for E. E. Pascall in a real estate office. I tried railroad work for three months and a half. Then came back to Phoenix, went to work for McArthur Brothers, then went to Globe and worked for W. I. Putman, came back to Phoenix, went to work for Green and Griffen, the Home Builders. I became a bookkeeper, then an assistant secretary, then went to work as a public accountant in 1923. Worked as a public accountant until 1933, then became a certified public accountant and have been engaged in business for myself since 1923. I was never a stockholder, officer or director in either the State Securities Corporation or Union Reserve Life Insurance Company. I had nothing to do with the policy, management or control of either company. I never sold or attempted to sell any stock, bonds or insurance in either company. I did some accounting work for both companies. I started in 1930 and worked for them some until they were in the hands of the receiver and quit. I kept a record of the time I put in and the work I did for these companies.

Thereupon certain books were marked defendant's Exhibit AL for identification.

(Testimony of Earl Canning.)

The Witness: These books are the diaries in which I kept the various hours that I worked. They are for the years 1929, 1930, 1931, 1932, 1933, 1934, 1935, 1936, 1937 and 1938. My arrangement for pay was \$2.00 per hour until 1935. From 1935 I think I received \$3.00 an hour.

Thereupon a document was marked Defendant's Exhibit AM for identification.

The Witness: The defendant's Exhibit AM for identification is a schedule showing the number of hours I worked each year and the pay received. It is a compilation of the time shown in these books, Exhibit AL for identification. I made it from the books and it clearly reflects the time shown in the books. It shows the total hours I worked during these years [554] and the total amount I was to be paid and the total amount I was paid.

Thereupon Defendant's Exhibit AM for identification was offered in evidence and Defendant's Exhibit AM for identification was received in evidence as Defendant's Exhibit AM in evidence, which abstracted to the issue is: [555]

(Testimony of Earl Canning.)

DEFENDANT'S EXHIBIT NO. AM  
 ACCOUNTANT'S FEE RECEIVED by  
 EARL CANNINT

State Securities Corporation and Union Reserve  
 Life Ins. Co.

Year 1930 hours.....	234 <sup>3</sup> / <sub>4</sub>	
“ 1931 hours.....	262 <sup>1</sup> / <sub>2</sub>	
“ 1932 hours.....	244 <sup>3</sup> / <sub>4</sub>	
“ 1933 hours.....	317 <sup>1</sup> / <sub>2</sub>	
“ 1934 hours.....	596	
	<hr/>	
Total hours @ \$2.00.....	1655 <sup>1</sup> / <sub>2</sub>	\$3,311.00
	<hr/>	
Amount paid .....		\$2,743.55
Year 1935 hours.....	461	
1936 hours.....	157 <sup>1</sup> / <sub>4</sub>	
1937 hours.....	206	
1938 hours.....	99 <sup>1</sup> / <sub>2</sub>	
	<hr/>	
Total hours @ \$3.00.....	923 <sup>3</sup> / <sub>4</sub>	\$2,771.25
	<hr/>	
Amount paid .....		2,880.00
		<hr/>
Total Earnings .....	6,082.25	
Amount paid .....		5,623.55
		<hr/>
Balance Unpaid .....		458.70

Earl Canning Audit Company — Phoenix-Prescott  
 Certified Public Accountant [556]

The Witness: The total number of hours I put in at \$2.00 per hour is 1655<sup>1</sup>/<sub>2</sub> for the years 1930, 1931, 1932, 1933 and 1934. This amounted to \$3311.00. They paid me during that time \$2743.55.

(Testimony of Earl Canning.)

I put in 923-3/4 hours at \$3.00 per hour, which amounted to \$2771.25, making a total amount of \$6082.25. I have been paid \$5623.55 and they still owe me \$458.70. I assisted in preparing page 2, page 3 and page 5 of Government's Exhibit 7 in evidence. I did not assist in preparing any other part of the report.

Thereupon the work sheets for the annual statement of 1936 were marked Defendant's Exhibit AN for identification.

The Witness: These are the work sheets I took from the general ledger. They are the work papers I had at the time I assisted in making the 1936 statement and are all the work papers I had. They are a part of the papers I gave to Mr. Hair. According to his testimony it was February 8. They have not been in my possession since that time. I was permitted to go over them in Mr. Flynn's office. The figures on pages 2, 3, 4 and 5 of the 1936 statement truly reflect the books of the Union Reserve Life Insurance Company as of that date in so far as their ledger items appear hereon. I did not make the actuarial calculations. I believe Mr. King Wilson with the assistance of Mr. Marquis made them. The actuarial figures are the items on page 4 from 25 to 29 which I accepted as correct and would class as actuarial figures. On page 5, item two, American Experience Table three and one half per cent on all business \$121,134.42; the last item



(Testimony of Earl Canning.)

on 7 on page 5 of \$15,311.99, making a net of \$105,-822.43, was an actuarial calculation for which Mr. Marquis and King Wilson furnished me and I considered that as correct. Otherwise I put the balance of the figures on page 2, 3, 4 and 5 of this report. The ledger items shown are exactly correct as shown by the books of the Union Reserve Life Insurance Company and I made them from [557] those books. I helped prepare the complete statement shown in Government's Exhibit 36 in evidence except the insurance inventory of \$105,065.92, which I considered an actuarial figure and which was furnished by Mr. Marquis and is reflected in the statement of 1936.

Thereupon a document was marked Defendants' AO for identification.

The Witness: Exhibit AO for identification is the work papers used in preparing a part of this statement as taken from the books and records of the State Securities Corporation and the Union Reserve, and is a calculation of the stock outstanding as compiled from the stock stubs and the stock ledger, which is now in evidence here and reflects 19,022 shares of stock outstanding. They are all the work papers I had at the time I prepared the statement. The sheet that has been removed was not one that I had at the time.

Thereupon defendant's Exhibit AO for identification was offered and received in evidence, which abstracted to the issue is:

(Testimony of Earl Canning.)

DEFENDANT'S EXHIBIT NO. AO

Being work sheets of Earl Canning for State Securities Corporation showing stock outstanding as of June 30, 1937, and work sheets on income tax, State Securities Corporation of 1936, and statement of assets and liabilities of Union Reserve Life Insurance Company, as of December 31, 1936 and of State Securities Corporation as of June 30, 1937.

Defendant's Exhibit AO in evidence, taken in connection with Government's Exhibit 36 in evidence show that the item of cash on hand and in banks came from the ledger of the Union Reserve Life Insurance Company. It would take a calculation to determine if that same figure is contained in the 1936 annual report, part of Government's Exhibit 7, for the reason that the cash on hand and in the bank on this statement as of June 30, 1937, includes three or four items, while the item in [558] the report to the Corporation Commission consists of two items. In order to be absolutely correct, I would have to make a calculation and see the books in order to do it. I would have to see the Union Reserve ledger. The figures in Exhibit 36 of cash on hand and in bank, according to the statement, came from the books of the Union Reserve and agrees with the books. This is a combined statement of the State Securities and the Union Reserve. The items, Bonds, Stocks, Etc., in Government's Exhibit 36 come from the books of the Union Reserve. [559]

(Testimony of Earl Canning.)

Referring to Government's Exhibit 36 of assets, disbursements and liabilities, the items, bonds, stocks, etc., consisting of \$7,150.00 Home Owners Loan bonds and \$2,500.00 Peoples Building and Loan, of stock they own is reflected by the ledger sheet in the ledger of the life insurance company. The figures all came from the life insurance company. The bills payable item is \$32,804.52. That consists of two items. \$25,380.95 from Union Reserve and \$7,423.57 from State Securities. That item was taken from the books and records of the State Securities under these circumstances. There was about five hundred or so notes that the State Securities owned as payment on the bonds which they had sold and in working over this statement, Mr. Marquis said he didn't think it would do to put in \$500,000 worth of notes receivable, so he worked it over and I added it up and it came to \$7,423.50, that was the figure we used. The loans receivable were taken from the Union Reserve books. That correctly reflects the ledger of the Union Reserve. Then we have warrants, \$751.64, which is reflected by the books of the Union Reserve and the item, fixtures and furniture of \$4,516.68, consists of \$4,234.56, which was taken from the Union Reserve books and \$282.12 from the books and records of State Securities. The next item would be accrued interest which comes from the books of the Union Reserve. Due and deferred premiums, \$22,767.49 was taken from the statement furnished the Corporation Commission of December 31, 1936, which is an actuarial

(Testimony of Earl Canning.)

figure. I took from the Union Reserve books, \$23,389.44 which was advanced commissions. There was an account in the Union Reserve books of an amount of money they held in the old citizens Bank of \$3,221.44, I added that to it. There was some doubt whether they would get all the money but we just wiped that account out. After going over the account of advance commissions, Mr. Marquis said there was \$4,602.13 that was not collectible, so we subtracted that, [560] leaving the figure in the statement \$19,215.83, accounts receivable are reflected by the Union Reserve books and came from there. The insurance inventory of \$105,065.92 was an actuarial figure furnished by Mr. Marquis. The ledger disbursements consisted of the money that had been spent to build the life insurance company, partly by the life insurance company and partly by the States Securities. The insurance and management expenses from date of organization was \$61,347.82, that includes rents, supplies and salaries. Commissions paid agents since date of organization, \$127,738.92. Agency organization and maintenance, \$32,634.02. Taxes, licenses, fees, death claims and items of adjustment, \$47,866.96, which was accurately taken from the books of the two companies and constitutes the amount disbursed as listed above in ledger disbursements. The liabilities shown on the statement represent policy coupons on deposit with the company as shown by the books of the life insurance company. Policy bonus'

(Testimony of Earl Canning.)

on deposit with the company as taken from the books of the company, consists of two items, for \$422.53 and \$162.75. Accounts payable, \$48,937.81, which consists of \$271.36, taken from the books of Union Reserve. There was \$4,666.45, which was an adjustment figured out by Mr. Marquis on the liability that would be due on account of eliminating the notes receivable and the amount due on the bonds issued, which would be needed to satisfy those bond holders that could not be satisfied by transferring stock. The bond holders were to get 3% of the net insurance premiums written and if the bond was not in good standing the money was held there for their benefit, when the bond did become in a position where it would receive it. The other items payable and in suspense that was taken from the books of the Union Reserve, consisted of four items of \$1,500.00, reserves for supplemental contracts, which with some money the company had and didn't know whether they were going to write the [561] policy or have to give it back so we put it in accounts payable, the proper place. Death claims payable in installments consists of just what it says. In all insurance accounting an item will come in and at the time it comes in you don't know where to put it so they put it in general suspense, then when a policy is written and they determine what the money is for, they charge it out or vice versa. In that account there was \$1916.27 and

(Testimony of Earl Canning.)

\$25.00. Then there were premiums paid in advance of \$706.68. Those four figures added together give the items in the liabilities of \$5,022.55.

The next item of reserve for outstanding policies came from the books and records of State Securities. The books and records of State Securities reflected 28 bonds, who had completed for 5 payments of \$150.00, and 3 fully paid at the time they were taken out of \$700.00, so that made \$3,400. \$31,000 was due 10 years from the time that the bonds were taken out. Then we figured the present worth of each one of those bonds. Figured at the rate of 6% compounded annually gave me the figure of \$24,945, the next and last figure for reserve for outstanding policies; an actuarial calculation compiled by Mr. Marquis and Mr. Wilson and reflected upon the statement furnished the Corporation Commission. At the time I made the statement and analysis I believed it correctly reflected the books of the company so far as it purported to do so, and it does. At the time I made the figures on pages 2, 3, 4 and 5 of the 1936 annual report of the Union Reserve Life Insurance Company, I believed that those figures correctly reflected the ledger accounts of the Union Reserve Life Insurance Company in so far as it purports to do so, and they do now reflect the ledger accounts as they were at that time. In preparing the statements I did not falsify either of them in any particular. I did not make any entry fraudulently or [562] with intent

(Testimony of Earl Canning.)

to defraud any person, but I made them honestly and to the best of my ability. I never did devise or intend to devise a scheme to defraud through the use of the United States mails with either of these defendants, or all of them, or any other person whomsoever. I did not enter into any conspiracy with any of these defendants, or all of them, or any other person whomsoever to make any false and fraudulent statement, or to the use of the mails of the United States to defraud. Whatever I did in the preparation of these statements was done in entire good faith to the best of my ability, believing that the statements as compiled from the figures as reflected by the books, and I now find on re-examination of these statements and books that they do truly reflect the ledger accounts.

### Cross Examination

Mr. Whitney

The Witness: I do not remember the exact date the statement to the Corporation Commission was prepared. It was shortly before March 8, 1937. I eventually prepared it after the books were written up and balanced, then I took the figures off the work papers and put them on the form. The statement for 1936 was probably not prepared until sometime the latter part of February. We had it completed and filed when it was due. It might have been the 26th, 27th or 28th. I don't want to say. I didn't make the 1937 statement. I don't know

(Testimony of Earl Canning.)

whether it was taken from the 1936 statement or not. I can't verify Mr. Hair's testimony unless I check back. The first item there is \$140,546.14, the next \$25,380.95. \$25,574.50 makes up the two items. Accounts receivable \$44,795.27; furniture and fixtures \$4,254.36, next is \$3579.86. The next item is \$22,767.49; a total of \$263,878.77. The assets are the same as they are in the Corporation Commission's report. Mr. Hair's testimony that they are both the same is probably correct. I made the statement of 1936 [563] with the exception of actuarial figures. I didn't prepare anything on the front page of the statement of 1936, a part of Government's Exhibit 36. My statement is just a bare, bald statement with a certificate on it qualifying the non-ledger items. I put on the statement that there was 19,022 shares of stock issued and outstanding.

#### Redirect Examination

Mr. Carson

The Witness: I believe the books of the State Securities Corporation disclose what Mrs. Carrie Bosch turned over for the bonds she bought, and how they were paid for. I don't know whether I could locate it or not.

#### Cross Examination

Mr. Wilson

The Witness: I never consulted Mr. Cornes in the preparation of any of the statements that I have



(Testimony of Earl Canning.)

testified to. I got no directions from Mr. Cornes about keeping the books or preparing the statements. He did not submit any figures to me of any kind concerning the condition of the companies. Mr. Hamilton never directed me to prepare the 1936 statement or any other statement. Neither did Mr. Harry Marquis.

### Cross Examination

Mr. Flynn

The Witness: The work sheets you handed me were prepared before I made the statement, and they were brought into Court this morning with Defendants' Exhibit AO. They belong in the folder marked AO. I started working for the State Securities or Marquis, Cornes and Marquis in 1930. I didn't open up the books for the State Securities. I kept the books, but I don't think I opened them up. I don't remember. During the time the records of the State Securities Corporation were kept I was in charge of keeping the books and records, the ones in evidence here. I started doing work for the Union Reserve Life Insurance Company when the State Securities took them over in 1933. I made [564] all of the entries on the Union Reserve books. I audited the books for the purpose of the statements and continued in that capacity or relationship until the company closed in 1938. I know the Union Reserve Life Insurance Company was a life insurance company selling insurance policies. I

(Testimony of Earl Canning.)

knew that the State Securities Corporation was selling bonds and Marquis, Cornes and Marquis were selling stock. The sale of stock didn't enter into the keeping of the books of the State Securities. The money was put in the same bank account and was kept track of in the Marquis, Cornes and Marquis books. Wasn't credited to the State Securities Corporation. The State Securities bank account was a combination of the Securities and Marquis, Cornes and Marquis bank account. All the money went into that account when we first started. Marquis, Cornes and Marquis had their money in that bank and the State Securities had their money in that bank. There was no consolidation at all. It was just put in the same bank account. Just one account in the bank. If the checks were for the Securities they got credit for it or they got charged with it. That was kept in the books. When it first started it had a cash book and ledger. Some cards were kept on the bonds sold. The stock book and the stock ledger. The general ledger and cash book were discontinued in 1933 for the State Securities Corporation. After that we took the checks as issued and the deposits as put in the bank and the money as received and noted them down on work papers and determined the condition of the company that way. I didn't keep any records to speak of in the Union Reserve. The only thing after that, as the outside auditor, they would get an account out of balance and they would yell for me, and I had to

(Testimony of Earl Canning.)

go there and either tell them how to do it or do it myself and balance it up. If I found out I had to make a journal entry, if they were incorrect, to correct it as it should be as an auditor and which we are entitled to do, that was what [565] they expected me to do at so much an hour. I also made statements of the Union Reserve Life and audited their books. I didn't audit the books of the State Securities Corporation. I kept their books. I made a few financial statements for the State Securities Corporation. I audited the books when I wrote them up and if they were not correct, they were corrected, as far as I could go. There are two or three different kinds of audits. You can audit a balance sheet or you can check every item or you can verify the money received was correct. As to the State Securities, I saw the original records, put them down in the book. I checked over most all the items, but not every item in the book. In other cases I have got accounts to balance and used a lot of the work that Mr. King Wilson and Mrs. Hill did as correct. On the Union Reserve Life that is what I did. I went over and checked a lot of items. I didn't check everyone. Any item that was apparently correct I would pass it by. I would not put any mark on them to show it had been, because there were numerous of those. Exhibit AO is my work sheets covering the stock outstanding. They were checked with the ledgers and stubs themselves and they were in balance. That is all of the work

(Testimony of Earl Canning.)

sheets except the two statements of December 31, 1936 for the Union Reserve. They worked in together. That is part of the work sheets of the 1936 report. I think that is all of Exhibit AO. The separate work sheets are not a part of Defendants' AO. They are part of another exhibit you got. That is where I figured the accrued interest. I don't think Defendants' Exhibit AN for identification is of much consequence. I don't know exactly what it is used for. These sheets go with Exhibit AN. Exhibit AO does not contain all the work sheets which I prepared in connection with the statement which is Government's Exhibit 36. That is the statement of June 30 of State Securities and Union Reserve. I thought it was in [566] evidence here. I explained from one that was in evidence. I explained what each item was for. Exhibit 36 in evidence is the balance sheet that I prepared and the work sheet there, Defendants' AO, were used. I brought Defendants' AO into Court this morning. That was not in the work sheets I turned over to Mr. Hair. I don't know where this folder was last February. I saw it first soon after I was indicted. I had to prove some of those statements and I discovered it some place. I do not remember now where I found it. It was in my office. Mr. Hair asked about them, but I could not find them. I didn't tell him at that time that I had turned them over to King Wilson. I told him that I couldn't find them, but that I would be perfectly willing to make another search

(Testimony of Earl Canning.)

of all the books so they could make a statement, and Mr. Morrison said, "We can't use any copy, we have to have the original."

Mr. Flynn: In your conversation, Mr. Canning, didn't Mr. Hair ask you how you prepared your balance sheet, Government's Exhibit 36 in evidence?

Mr. Carson: Just a minute, we object to that, your Honor, as not proper cross-examination, not touched upon in the examination in chief of this witness. It is not proper cross examination as I understand the rule to be.

The objection was by the Court overruled, and to which an exception was taken and duly entered in the record.

Mr. Carson: We object to all of this line, your Honor, as not proper cross examination.

The Court: Very well, the record will show your objection.

Mr. Carson: And an exception to the ruling?

The Court: Yes and your exception on the Court's adverse ruling. [567]

The Witness: I didn't prepare them with the work sheets. I never said I did prepare them with the work sheets. I had these work sheets in my possession when this balance sheet was prepared and mimeographed in November, 1937, and the statement and figures in that balance sheet correspond with the figures in my work sheet. The work papers

(Testimony of Earl Canning.)

do not show that the State Securities Corporation was in the red some \$80,000. This statement here is not a profit and loss statement. The figures should not affect it at all and didn't. These figures are simply to balance the disbursements as listed on the ledger sheets to make it balance out as it should. There are other non-ledger assets in the State Securities Corporation which affect the insurance company. They are the things we adjusted. Take the \$500,000 worth of notes and cut them to \$7,400. That is a non-ledger asset at the present time. So is accounts payable of \$46,600, and some paid directly to the State Securities. We determined that figure by the fact that they had a liability against that \$500,000 worth of notes receivable of some seven hundred odd thousand dollars. We got to work and found out that practically all of them are defaulted, and we determined the company has to pay 31 bonds. Instead of wiping them all out, we go and set aside \$46,000 to pay any liability that the State Securities have. This figure is simply a balancing figure to show that the calculation is correct. I do not know how many bonds of State Securities Corporation on which money was owing were outstanding in 1936 and 1937. There was 31 bonds that were fully paid on which the State Securities were absolutely legally liable. I didn't know how many there were on which installments were due and unpaid. The bonds were not all taken up long prior to December 31, 1936. There was 960

(Testimony of Earl Canning.)

bonds sold. They were not put in the books. They were put on cards as cash. Whether the [568] cards are correct I don't know. I never kept them. We arrived at the reduced figure on the \$500,000 outstanding notes by Mr. Marquis taking each card and deciding that there was only \$7,400 that there was a possibility to collect. I don't know what the total amount was that we reduced. It was something in the nature of \$500,000 not paid and still due. The bonds had not been turned in to the State Securities, except maybe 4 or 5 had been cancelled. Marquis, Cornes and Marquis owned the bonds. They were still outstanding and charges against State Securities Corporation, if Marquis, Cornes and Marquis wanted to exercise that right. Marquis, Cornes and Marquis delivered the bondholders of installments by taking over the interest in the bonds. They then owned the bonds. The State Securities had \$500.00 coming, but they didn't have it coming. I don't know how they traded stock for bonds. That didn't enter into the bookkeeping. All I know is what was entered in the books.

Mr. Flynn: If, according to Mr. Marquis' testimony, and, if I haven't got it right, I probably will be corrected by 4 or 5 attorneys, if, when they exchanged that stock for these bonds, if they gave him \$150.00 worth of stock.

The Witness: Yes.

Q. And he surrenders the bonds?

(Testimony of Earl Canning.)

A. Yes.

Q. Then Marquis, Cornes and Marquis if they hold that bond as it is, then they would hold the balance of any installments?

Mr. Carson: I object to that as not proper cross-examination, not within the scope of the direct examination at all.

The Court: The witness has already answered. [569]

Mr. Carson: I move that the answer be stricken.

The Court: Well, denied.

Mr. Carson: May I have an exception?

The Court: Exception allowed, yes sir.

The Witness: At the bottom of this page of Defendants' Exhibit AO in evidence, the item surplus with a ditto mark in the margin means that is from the ledger. I believe that was taken from the income tax and the income tax reflects ledger items. That entry down there is not necessarily taken from the ledger. That would indicate the figures on the income tax came off the ledger and this came off the income tax, so in the end it came off the ledger. I looked at the income tax to tell whether this had anything to do with the income tax. That entry wouldn't tell anyone. It would tell me. Under the surplus for 1933 we have then in red \$88,587.30. That means a surplus deficit of that much. That means as far as that is concerned on the work sheet that the State Securities Corpora-



(Testimony of Earl Canning.)

tion for the year 1933 had a grand deficit of \$88,587.30. They didn't make a profit for 1933. They got a deficit, loss for '33 and the income tax sets it forth, and there is no place I have said that the State Securities made a profit in any year in any statement I have made out, because I would know it was a falsehood if I did. Mr. Marquis explained the 10% profit. I was talking to Mr. Marquis and I didn't know anything about it. Just as Mr. Marquis testified they made 10% profit in Union Reserve as it was reflected in the report to the Corporation Commission. I don't know much about that. He may know. The State Securities Corporation made no profit in 1933 or any other year.

Mr. Flynn: Now, did you have prepared or have anything to do with the 1931 statement?

Mr. Carson: We object to it as not proper cross- [570] examination, your Honor. It was not touched on in our examination in chief.

The Court: Oh yes, go ahead with the examination. The objection is overruled.

Mr. Carson: May I have an exception?

The Court: An exception may be noted, yes.

Mr. Flynn: Then, Mr. Canning, Government's Exhibit 56 in evidence appears to be a balance sheet dated December 31, 1931 of the State Securities Corporation.

The Witness: Yes sir.

Q. Did you prepare that or the statement from which this particular—

(Testimony of Earl Canning.)

Mr. Carson: May that objection go to all of this?

The Court: All this line of questioning?

Mr. Carson: Any question concerning this exhibit as not proper cross examination.

The Court: It may show.

Mr. Carson: And an exception noted?

The Court: Exception noted as to all this line of testimony.

The Witness: Yes sir, I prepared it. The statement shows the excess assets over liabilities of \$135,660.40. When the company issued a bond there was a liability set up against the bond. It was continued throughout the history of the company on all the bonds that were turned in in exchange for the stock. No reduction was made for any bonds that were turned in in exchange for stock until in June, 1930. There is no liability set up for bonds in the statement of State Securities for December 31, 1936. There was a liability set up in the statement of 1936 as a reserve for outstanding bonds of \$24,945.00, which [571] was the present worth of the 31 bonds that would and did mature 10 years from the date on each one. They had been paid in full and never surrendered for stock. There had been no liability set up for the bonds which Marquis, Cornes and Marquis traded stock for in that statement. We only set up as an asset \$7,400 as due on those bonds. This is one of the work sheets I turned over to Mr. Hair. It covers December

(Testimony of Earl Canning.)

31, 1931 of State Securities. There was a loss December 31, 1931. At the end of the year there was a deficit in the State Securities Corporation of \$55,218.54. The statement December 31, 1931, Government's Exhibit 56, which I prepared, shows an excess of assets over liabilities of \$135,660.41. I didn't know that one of the purposes of the statements was to furnish them to the stockholders and prospective purchasers of stock in the State Securities Corporation. I knew when I completed the statement of 1936 that it was to be filed with the Corporation Commission. All of the figures that I had anything to do with were ledger items. That is my figure on the certificate which is a part of Exhibit 7 and that certificate is dated March 1, 1937. I didn't make any exception in the certificate as to non-ledger items and actuarial figures. The statement simply says receipts and disbursements. The statement is a statement of income, disbursements, assets and liabilities, as shown by the books and records of the company. That means that I got all the figures off the ledgers or the cash book. The actuarial figures did not show by the books or records. This is according to the books and every item I got in there is taken from the books. The statement of income and disbursement does not include the actuarial figures. In the statement which is a part of the 1936 report, under the heading of assets and liabilities, there are actuarial figures. That does not mean that you could go to

(Testimony of Earl Canning.)

the books to justify or [572] verify all of the figures in the statement there because they are not on the books. I do not know why the 1936 statement was prepared. The first time I heard about it was when Mr. Marquis testified on the stand. There were no ledger accounts of the State Securities Corporation from 1933 until the close of the business. From December, 1933, there were no ledger accounts kept in the books. The checks and receipts and deposits and everything was put together and a balance sheet was made and put on the income tax. That is just the same as a ledger. It doesn't have to be on any prescribed book or kept on any kind of paper so long as it reflects the ledger accounts and the assets and liabilities. The records were compiled by me. Therefore, I had to go over every single item to get that in, and then in compiling this statement I took the income tax as correct, which reflected the balance sheet at the end of the year, took the items that affected the profit and loss in order to determine the amount of money spent under this non-ledger. I haven't got the form before me. I can't call them the right thing. The ledger accounts I was referring to when I said complete rechecking was made of ledger accounts against original entries. I was referring to the books and records. I checked over all the ledger accounts just as they appeared in the books that were written up to December 31, 1933, and from there on the last accounts were kept on work papers,

(Testimony of Earl Canning.)

and we got them from these receipts and disbursements and every operation of the company, put them on work figures to arrive at the same figure as if it had been written up in a bound book with ink, what you would naturally call a ledger. The figures were just as accurate and did reflect the same thing as if it had been put in a bound book. I made up the accounts on sheets of paper like this you have there, wrote it down, what it was to be charged to. I got the original data [573] from check stubs, receipts, deposit slips and every information that was furnished to me, just the same as I would put in a book and write it out. It was identically the same thing, except it wasn't written up in ink in a bound book. The basis of the figure "Total liabilities and reserves \$184,431.29" and the figure "To balance \$453,258.20" is \$639,689.49 minus \$186,431.29. Subtract one from the other and you have got that "To balance" or as written there \$453,258.20. From an accounting standpoint that means that the liabilities as reflected under the above heading "Assets and disbursements" you take one from the other and that would be the true balance. That means those non-ledger disbursements were considered as assets, and in that case the difference between the total assets and the liabilities would make \$453,258.20. Taking the history of the company from the origin to date the certificate covers. The assets and disbursements were added together to make the \$639,689.49. In the dis-

(Testimony of Earl Canning.)

bursements are included commissions paid agents for the sale of stock of \$127,000. Insurance and management expense from the date of organization, rent, supplies, employees' salaries of \$61,347.82, taxes and license fees, death claims upon all policies, where injured had died of \$47,866.96. They were all totalled in with the assets. But from that total I deducted the liabilities and found there was a balance of \$453,258.20. That is just the difference between the assets and the disbursements added together in the liabilities. I never did take the statement and take the disbursements from the first column of the assets and disbursements, together with the item of insurance inventory of \$105,000 and determine how the assets and liabilities stood. I went through the item "Cash on hand and in bank, \$9,251.42" as of December 31, 1936, and the books showed it was set up on the books and was on hand as of December 31, 1936. I didn't say that that item of nine and some odd dollars included cash collected [574] in January and February of 1937. It was, however, collected in January and February. They were included and put in this statement, Government's Exhibit 33, for the insurance company as cash on hands. It was the policy of the company from its inception, from 1933 on, to hold the books open until about the 15th or so and then count this as cash on hands and reduce another asset which, if we increased one asset and decreased one, the result remains the same. We

(Testimony of Earl Canning.)

couldn't carry the items collected in January and February on the books as something to be paid in the future and also take them as cash. When they were included as cash they were taken out of bills receivable. I don't know whether that included anything besides past due premiums on insurance. The cash book entries of December 31, 1936 where it shows "Receipts State Securities Corporation, MCM, \$50.00; \$200.00; \$15.00; \$26.50" means that was money belonging to Marquis, Cornes and Marquis. I don't know what for. That shows the State Securities company collected and received to its credit in one item \$200.00, December 31, 1936. I don't know when that was actually paid in. King Wilson put that in. I don't know what record he took it out of. When I examined the books I didn't know when the cash was received. I took the books to be correct. I didn't make any audit to determine if any of the items actually were collected prior or subsequent to January 1. The understanding was to put in those items that were covered by those "due and deferred" on which there had been a reserve already set up. I don't remember checking the items back. This money was collected by the Union Reserve. It is credited to Marquis, Cornes and Marquis. It was credited to State Securities Corporation, then the State Securities Corporation in return owed Marquis, Cornes and Marquis. It was not money owing to Union Reserve Life Insurance Company, and could not possibly

(Testimony of Earl Canning.)

[575] be past due accounts on insurance policies that were due on December 31, 1936. The State Securities didn't receive any money for the sale of stock. Marquis, Cornes and Marquis received that money. All the money the State Securities company got was from bonds. They didn't get much after they started collecting on bonds. That was the only source of income they had. The money was deposited in the bank and credited to State Securities or for Marquis, Cornes and Marquis.

[576]

Nobody but myself and the people who kept the records could tell which was which. I could not tell where the particular item of \$200.00 came from. The money from the sale of stock was not credited to the State Securities Corporation because it didn't belong to the State Securities. In that instance it was credited to the State Securities Corporation because Marquis, Cornes and Marquis didn't appear in the Union Reserve books.

Mr. Flynn: Q. I want to show you this slip of paper which purports to be a deposit slip Mr. Canning and ask you if those check marks there are yours.

Mr. Carson: We object to it your Honor as not proper cross examination.

The Court: Well the objection is overruled.

Mr. Carson: An exception noted.

The Court: Yes, allowed.



(Testimony of Earl Canning.)

The Witness: I believe they are. That does not mean in auditing the books and deposits of the company that I checked this deposit slip in preparing my work sheets. It indicates that in order to balance the cash and see if it was all on hand as reflected by the ledger, it was necessary for me to go into these deposit slips for the money that had been put in as placed by Mr. Wilson in the books. These are the things to see if it was put in the bank, to see if the cash was correct and I had to balance to see if that \$7400 was correct. I didn't check the entries on December 31, 1936 to determine whether or not the cash was received on that date or later. I simply looked to see where it had been put. I can't tell from this whether it was put in before December 31. This was done solely to see if they would have that much cash on hand at the end of the year as reflected by the books. I checked the deposit slips of the Union Reserve to determine that. I took Mr. King Wilson's word that they were correct and set it down as correct. The [577] document I now have was one deposit slip of the Union Reserve Life Insurance Company showing a deposit made to its credit on the date the slip bears.

Thereupon the slip was offered and received in evidence as Government's Exhibit 66, which being abstracted to the issue is: [578]

(Testimony of Earl Canning.)

## GOVERNMENT'S EXHIBIT NO. 66

Being one duplicate deposit slip showing deposit by Union Reserve Life Insurance Company in the First National Bank of Arizona, Phoenix, Arizona on January 11, 1937, which abstracted to the record is as follows:

Deposited with  
THE FIRST NATIONAL BANK  
OF ARIZONA  
Phoenix, Arizona

By Union Reserve Life Ins. Co.

Jan. 16 1937

	Dollars	Cents
Currency		
Silver		
Gold		
Checks		
Walter Freedman .....	67.75	
Beyrl Wilson .....	40.—	
H. S. Kerby .....	63.53	
Morris Ellison .....	128.—	
W. M. Staggs .....	100.—	
Hearn & Caid (S. S. C.).....	200.—	
C. E. Whiteaker (S. S. C.).....	20.—	
Beyrl Wilson (S. S. C.).....	50.—	
Ivan Anderson (S. S. C.).....	47.50	
Total.....	\$716.98	

Not Negotiable

Duplicate Deposit Ticket

Received by.....

(Testimony of Earl Canning.)

The first item on said deposit slip of \$67.95 being indicated by a check mark with a red pencil and each of the other items being indicated by a check mark with a green pencil. Said deposit slip contains printed thereon the terms and conditions upon which said deposit is received. [579]

There was a connection between the deposit slip and the figures in my work sheet. Under Union Reserve cash reconciliation December 31, 1936 it was made for the purpose of seeing if they did have that money on hand so that if I put it in there there wouldn't be any argument as to whether they had the money or didn't have the money. I could determine from deposit slip 66 that the deposit was made on January 16, 1937, sixteen days after the close of the year 1936. They didn't have that cash on hand as of December 31, 1936, but they did enter the items in prior to December 31, 1936 and said they did have it on hand and this was verified that they had the money and put in the bank to verify the \$9200.00. The \$200.00 deposit slip of January 16, 1937 was entered in the books to the credit of the State Securities Corporation. There is no figure in Government's Exhibit 36 showing the surplus because it is not a profit and loss statement. There is not even any capital stock on that. It isn't a balance sheet, it is an Assets and Disbursements sheet. If it was a balance sheet,

(Testimony of Earl Canning.)

it would have to show the difference. It is what we have and what we disbursed and what we own and is not intended as a balance sheet. I don't think the statement on the first page "Combined Balance Sheet as of June 30, 1937" is correct. You might take the statement of June 30, 1937 and work it over and arrive at the surplus or net worth of the company. Insofar as it goes, it is absolutely correct as of the assets and disbursements. The cash on hand in the books \$9251.42 was one of the items put in there and I knew that that included the cash items actually collected and received after December 31, 1936. I knew that if I did not put it in as cash that all of the accounts receivable would have been increased so that it would have reached the same total. I do not know where the Home Owners Loan Bonds were on the 31st of December, 1936. I didn't think it was necessary to go into the bank to check them as there [580] was no evidence on the book that they had been sold and the coupons were being clipped and put in. I found from the interest that they owned them a couple of years and there was no entries that they had been sold. Under the circumstances where you have confidence in the men you are dealing with you naturally take somebody's work for something. The books reflected they owned them, they had been collecting the coupons so I didn't check them.

Mr. Flynn: Q. Don't you know when you certified as a Certified Public Accountant to a

(Testimony of Earl Canning.)

statement, that the people relied upon your certificate as to the correctness and the truthfulness to that statement?

A. No, sir——

Mr. Carson: Objection to that as argumentative, your Honor, improper cross examination.

The Court: Yes, answer the question.

The Witness: Yes.

Mr. Carson: What was the ruling?

The Court: I told him to answer the question.

Mr. Carson: I said I objected——

The Court: Yes, I know. I overruled it.

Mr. Carson: May I have an exception?

The Court: Yes, let it be noted.

Mr. Flynn: Isn't that the purpose of a certificate and audit by a Certified Public Accountant?

The Witness: Yes.

The Witness: It is the general practice before making a certificate of an audit as to the assets to verify its assets by checking of the actual assets themselves. I didn't do it in this case. The item, bills receivable \$32,804.52 includes \$7400.00 approximately due to the State Securities on notes for bonds. The balance of \$2500.00 was taken from the [581] ledger of the Union Reserve Life Insurance Company. There was no account in the ledger

(Testimony of Earl Canning.)

in regard to the \$7423.50. I got that from Mr. Marquis. I would call that a ledger account. It is not supported by the ledger but it could be. The books had not been completed then. I based it on Mr. Marquis' figures. I didn't say in the statement that some of the ledger accounts were made by estimation and figuring done by Mr. Marquis. The \$140,546.14 I believe included the mortgages on the Yuma citrus land. I made the entry increasing those mortgages. It was made when I was going over the books at the end of the year. I heard the minutes read here in reference to the increase in the mortgages. I got the information as to the increased amount from Mr. Marquis. I think I made the entry about the 20th of February after the close of 1936. I don't know except what Mr. Marquis told me when the increase was made. I understood the mortgage was made up and everything done. I got the item of warrants \$451.00 out of the ledger. I didn't check the warrants, but I asked Mrs. Hill or Mr. Wilson and they said they were on hand. The furniture and fixtures \$4,000.00 was a ledger item. I took the supporting data for the \$61,347.82 insurance and management expense from date of organization, rents, supplies, employees salaries etc. off the books of the life company and the books and records of the State Securities Corporation. I found it on the ledger and the records of the State Securities Corporation. When I said ledger disbursements up to 1936

(Testimony of Earl Canning.)

so far as the State Securities Corporation is concerned, I meant the items found on work sheets and memorandum. The item \$127,738.92, commission paid agents since date of organization is the commission paid by Union Reserve. It does not include commissions for the sale of stock. I got that from the books of the Union Reserve Life Insurance Company. There isn't anything in the statement based upon any commission paid any of the salesmen or any of the officers for [582] the sale of stock in the State Securities Corporation. The State Securities didn't sell any stock and they couldn't pay a commission. The item, agency organization and maintenance since time of organization is partly Union Reserve and partly State Securities. It looks like \$14,807.50 is State Securities and \$17,862.52 is Union Reserve. The general office expense was all charged to the Union Reserve. Some of it was paid by Marquis, Cornes and Marquis. The State Securities didn't pay very much. It would be hard to pick them out of the combined balance sheet. State Securities Corporation was in the business of selling bonds. They weren't selling any bonds in 1936, but that was their chief business when they started out. There was very little expense charged to State Securities during 1935 and 1936. That was operating cost for operating the office which the Union Reserve should pay for. I prepared these statements by taking them out of the books. The Union Reserve Life had a bank ac-

(Testimony of Earl Canning.)

count and cash. They paid it out of that and expense and put it on the books of the Union Reserve, had nothing to do with State Securities. The office rent was paid one month charged to Union Reserve and the other month to Marquis, Cornes and Marquis. There was \$1210 paid in 1933 by the Union Reserve, \$840.00 in 1934, \$760.00 in 1935 and right along. This amount of \$2200.00 for 1936 rent was charged to the Union Reserve, and the money paid Mr. Luhrs by the Union Reserve out of their own bank account. There is no charge to the State Securities Corporation for any part of it. The item \$271.00 under accounts payable was Union Reserve and the balance was that adjusted figure that Mr. Marquis figured. That is not determined from the books. It was a ledger item, but it was not put in the ledger. That is one of the items that is excluded in my certificate. There is nothing in that item that would indicate it was not a regular ledger item. That item is based upon some figuring that Mr. [583] Marquis furnished me. I didn't explain that in the certificate or specifically exclude it. The \$9500 item paid in advance and in suspense is a ledger item. That includes a reserve for supplemental contract \$1500. That was a ledger figure. It will be found under reserve for supplemental contract in the general ledger. The item \$24,945 reserve for outstanding bonds was a figure given me by Mr. Marquis. It is based on the present worth of a dollar, how much money I have to have



(Testimony of Earl Canning.)

today to pay \$400 or \$500 in ten years from now, interest compounded at six per cent semiannually. There is a formula to work that out. Mr. Marquis figured it out for me. That was based on the outstanding bonds. That didn't take into consideration the bonds sold to individuals and surrendered for stock. It was the ones originally sold and fully paid for. The only reserve that was set up was \$46,660 of that accounts payable which was set up to cover any liability that the Securities may have incurred under these bonds that had become delinquent. I mean by reserve that a liability was set up in the books for that amount. I don't mean any money was set aside and earmarked and kept for that particular purpose. A duplicate voucher from Government's Exhibit 24 in evidence, payable to George H. Luhrs for \$240.00, dated February 24, 1936 is for rent of Room 210 Luhrs Tower for the month of February. It is a State Securities Corporation check. That is a Marquis, Cornes and Marquis charge. That is not a State Securities Corporation charge because the State Securities Corporation was not paying any rent. Marquis, Cornes and Marquis was paying the rent and Union Reserve was paying the rent. It was a proper charge to Marquis, Cornes and Marquis. It was not included in the item that was supposed to be made up as rent for offices. The only place that it was included, withdrawals of cash by the officers or directors of the State Securities Corporation was in that \$22,-

(Testimony of Earl Canning.)

000.00 accounts receivable, the [584] account of \$22,250.27. That would be in the accounts receivable. Marquis, Cornes and Marquis would owe it. The statement is not a balance sheet. It is just a financial statement. There are items in there from both companies for the disbursements and liabilities. As to the Union Reserve Life Insurance Company it is as of December 31, 1936. As to the State Securities Corporation as of June 30, 1937. Where there was a change in the Union Reserve Life accounts between December 31, 1936 and June 30, 1937, they were disregarded, and that is merely statement as of December 31, 1936, and that was true even where there might have been a transfer of assets or payment by the Union Reserve Life to the State Securities Corporation between those dates.

Mr. Flynn: Q. And that payment or transfer of assets would be included in the State Securities Corporation statement as of June 30th, 1937?

Mr. Carson: I object to that as assuming something not in evidence, improper cross-examination.

The Witness: I didn't get that at all.

The Court: Read the question.

(The question was read by the Reporter.)

The Court: Well, the question may be answered.

Mr. Carson: May I have an exception?

(Testimony of Earl Canning.)

The Court: Let an exception be noted.

The Witness: The condition—let me get that right, I want to be sure.

Mr. Carson: Well, for the force of the objection, your Honor, I'd like for the Reporter to read the preceding question if you don't have it in mind?

The Court: Well, let the preceding question be read.

(The preceding question and answer was read by the Reporter.)

Mr. Carson: We object to it, assuming facts not in [585] evidence and not proper cross-examination.

The Court: Well, the court has ruled on it. Answer the question.

The Witness: Well, you see it could not affect the Union Reserve with any subsequent payments after or during 1937, because the statement was for 1936.

Mr. Flynn: But it could affect the State Securities Statement, couldn't it?

A. No.

Mr. Carson: The same objection, your Honor. It is assuming facts not in evidence. There is no evidence of any such transfer that Mr. Flynn is asking about. It is argumentative, not proper cross-examination and assuming facts not in evidence.

The Court: Well, the objection is overruled.

(Testimony of Earl Canning.)

Mr. Carson: May I have an exception?

The Court: An exception is allowed.

The Witness: As the State Securities owned the Union Reserve, that account would be wiped out anyhow. It would not make any difference, because you could not reduce the assets of the Union Reserve and then put it in the State Securities, because you would have to take it out anyhow and you would be in the same position anyway.

Mr. Flynn: I am going to ask the witness a hypothetical question in order to get this matter straight, if I can?

The Witness: Okeh?

The Court: As an accountant?

Mr. Flynn: As an Accountant. Assuming, Mr. Canning, that a statement is made, a combined balance sheet or statement is made of two companies; company A as of December 31st, 1936, and company B as of June 30th, 1936?

The Witness: Yes. [586]

Q. In this statement is listed assets which belong to company A on December 31st, 1936?

A. Yes.

Q. They would show in that combined statement, would they not?

Mr. Carson: I object to it as assuming facts not in evidence and not proper cross-examination.

(Testimony of Earl Canning.)

The Court: The objection is overruled.

Mr. Carson: May I have an exception?

The Court: Let the record show an exception.

The Witness: I can't answer that question without getting some records together to find out whether they did or not. If a company owns assets it would be included in the statements. If the company A owned assets on December 30, 1936 and the statement was made as of that date, the assets would be included. The same would be true of any liabilities. That is what we did with the Union Reserve.

The Witness: When a combined statement is made as of these two dates, a list is taken of the assets of one company and the assets of the other and added together of those two different dates. If the company who made its statements as of December, 1936 transferred its bonds after that to the company who made its statement as of June 30, 1937, it would show the bonds in each company. One of them is wiped out and the other one would show the bonds. That theory is just haywire. If there had been any changes in the statement of the Union Reserve Life as of December 31, 1936 and before June 30, 1937, if those changes affected the State Securities, it would have to make adjustments. There was some other instances in this combined statement of debits and credits. If the furniture

(Testimony of Earl Canning.)

and fixtures had been transferred from the Union Reserve Life Insurance Company to the State Securities Company in February or March or April, that [587] change would not appear in both reports. It would be necessary to go over the accounts of both companies to see whether there had been any transfers. I think that was done in the preparation of this. When I stated in my testimony that the Union Reserve Life Insurance Company showed an increase in surplus of \$10,000 for 1933, I was talking from what Mr. Marquis had testified. Looking at Government's Exhibit 7 in evidence, it says on page 8 that the increase in surplus is \$10,002. I don't know whether that is correct or not.

Mr. Flynn: I would like to change the form of the question. I will ask you if that does not mean that the Union Reserve Life Insurance Company, that there was donated to Union Reserve Life Insurance surplus in the amount of \$23,667.33 as of that date and for the year 1933?

Mr. Carson: I object to it as not proper cross-examination, calling for a conclusion of the witness.

The Court: Well, the witness will answer the question.

Mr. Carson: May I have an exception?

The Court: You may have an exception.

The Witness: I have got to see the Union Reserve books before I answer it. I don't want to

(Testimony of Earl Canning.)

answer until I am absolutely sure I am right. I don't want to answer unless I saw the ledger and journal of the Union Reserve Life. I made the entry in Government's Exhibit 14 as of April 1, 1933. I am looking at entry A1 in Government's Exhibit 14. On that page on line 21 it says "surplus donated \$23,667.33." That is the surplus donated by the State Securities to the Union Reserve in the form of mortgages, part of which were executed by the officers. They gave a Cornes mortgage, Marquis mortgage, B. Smith mortgage, A Stewart mortgage, Durham mortgage, Mandell mortgage, Brown mortgage, Fuqua mortgage and another Fuqua mortgage and a Shawler mortgage and R. E. Elliot mortgage and Yellocht mortgage [588] for \$1200.00. That is what they gave them for it and took it in settling for stock of the Union Reserve. Lewis mortgage of \$15,000.00. Stohl mortgage of \$7,000.00; real estate mortgage of Murphy of \$10,000.00 and the balance between the two is the donated surplus of \$23,667.33, which is donated surplus in the purest form of accounting.

#### Cross Examination

By Mr. Whitney

The Witness: I furnished a statement of assets and liabilities shown in 1936, about the date of it.

## JOHN HAUSNER

was called as a witness on behalf of the defendant Canning, and being first duly sworn, testified as follows:

## Direct Examination

The Witness: My name is John Hausner. I live in Phoenix, Arizona. I have lived here since 1911. I am a contractor. I have known Earl Canning since about 1915 or '16. I know his reputation in this community for honesty and integrity. I know his reputation in this community for truth and veracity. It is good. I know his reputation in this community as a law abiding citizen. It is good.

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## BEN DODT

was called as a witness on behalf of the defendant Canning, and being first duly sworn testified as follows:

## Direct Examination

The Witness: My name is B. H. Dodt. I live in Phoenix, Arizona. I am in the real estate business. I have known the defendant Earl Canning about twenty-nine years. I am acquainted with his reputation for honesty and integrity. I am acquainted with his reputation for truth and veracity and am acquainted with his reputation in this community as a law abiding citizen. That reputation is good. [589]



L. W. COGGINS

was called as a witness in behalf of defendant Canning, and being first duly sworn testified as follows:

Direct Examination

The Witness: My name is L. W. Coggins. I live at 715 West Portland, Phoenix. I am president of the Coggins Title Insurance Trust Company. I have lived here forty-eight years. I know the defendant Earl Canning. I am acquainted with his reputation in this community for honesty and integrity, truth and veracity and as to being a good law abiding citizen and I know that his reputation is good.

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GEORGE C. BARNUM

was called as a witness on behalf of the defendant Canning, and being first duly sworn testified as follows:

Direct Examination

The Witness: My name is George C. Barnum. I live at 24 East Palm Avenue. I am a merchant. I have lived in Phoenix since 1907 and I know Earl Canning. I have known him between twenty and twenty-five years. I know that his reputation in this community for honesty and integrity, truth and honesty and as being a good law abiding citizen is good.

## B. F. CARTER

was called as a witness on behalf of the defendant Canning, and being first duly sworn testified as follows:

## Direct Examination

The Witness: My name is B. F. Carter. I live in Phoenix. I am with the Vinson-Carter Electric Company. I have lived here a little over twenty-five years. I know Earl Canning. I know that his reputation for honesty and integrity, truth and veracity and as to being a good law abiding citizen in the community where he lives is good.

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## C. H. TUCKER

was called as a witness on behalf of the defendant Canning, and being first duly sworn testified as follows: [590]

## Direct Examination

The Witness: My name is C. H. Tucker. I live at 525 West Monte Vista, Phoenix, Arizona. I have lived in Phoenix since 1920. I am president of the Arizona Oil Company. I know the defendant Earl Canning. I know that his reputation in this community for honesty and integrity, truth and veracity and as to being a law abiding citizen is good.

ORA T. HILL

was called as a witness on behalf of the defendants, and having been heretofore duly sworn testified as follows:

Direct Examination

By Mr. Wilson:

The Witness: I was former bookkeeper for the Union Reserve Life Insurance Company. I brought some of the checks of the Union Reserve Life with me into court this morning. These checks were all drawn against the Union Reserve Life. There were two accounts, one was called the reserve account and the other was just a regular checking account. The checks were issued in the regular course of business of the Union Reserve Life Insurance Company.

Thereupon the documents were marked as defendants' Exhibit AQ for identification.

The Witness: This file are records of the stock transactions kept in the regular course of the business of the Union Reserve Life Insurance Company and of the State Securities Corporation and they reflect the amount of stock sold and I believe the price at which it was sold.

Whereupon Mr. Wilson offered a complete file in evidence which without objection was received in evidence and marked as defendants' Exhibit AQ, which abstracted to the issue is:

(Testimony of Ora T. Hill.)

DEFENDANTS' EXHIBIT NO. AQ

Being a bundle of cancelled checks of Union Reserve Life Insurance Company. [591]

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ROBERT S. CUSHMAN

was called as a witness on behalf of the defendants, and being first duly sworn testified as follows:

Direct Examination

The Witness: My name is Robert S. Cushman. I know the defendant George H. Cornes. I have known him for a number of years. I had a transaction on or about the 27th of August, 1936 in the matter of some transfer of stock. It involved a transfer of some stock from Mr. Cornes to me and the amount was \$400.00. The way I understood the transaction was that I was to do some work on Mr. Cornes' house and get so much cash and the balance was to be \$400.00 worth of stock or twenty shares of his own stock when he had it, and he gave me a receipt. That is the only transaction I had with Mr. Cornes involving the State Securities Corporation or any stock or withdrawals of any kind. [592]

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CLIFFORD MADDOX

was called as a witness on behalf of the defendant Canning, and being first duly sworn, testified as follows:

(Testimony of Clifford Maddox.)

Direct Examination

My name is Clifford Maddox. I live at 1142 West Willetta, Phoenix. I have lived here 51 years. I am very well acquainted with the defendant Earl Canning. I know his reputation in this community, his honesty and integrity, truth and veracity, and his being a law abiding citizen, and I know that that reputation is good.

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GEORGE H. CORNES

was called as a witness in his own behalf, and being first duly sworn, testified as follows:

Direct Examination

The Witness: My name is George H. Cornes. I am one of the defendants in this case. I am 47 years old, married and have a family. I reside at 7 Medlock Drive. I am a registered pharmacist. I have had experience in selling. I came to the City of Phoenix to reside permanently on the 9th or 10th day of December, 1929. At that time I was acquainted with R. F. Marquis. I had met H. S. Marquis. I did not know the defendant Hamilton nor Earl Canning prior to that time. I saw Mr. Marquis in Phoenix when I arrived. I talked to him about the formation of State Securities Corporation and of becoming a member.

Mr. Wilson: All right, will you tell the jury the circumstances, please.

(Testimony of George H. Cornes.)

The Witness: We met Mr. Marquis, I believe——

Mr. Flynn: The question is, your Honor, to tell the circumstances. You understand that does not call for the conversations. If it does, we object to it on the ground that it is self-serving.

The Court: Yes, so far as any conversation is concerned. [593] Yes, tell the circumstances was your question.

Mr. Wilson: Well, if the Court pleases, I would take issue with counsel that any conversation had throughout this so-called—the period of this so-called conspiracy that the Government alleges existed for a matter of 8 or 8½ years, would not be self-serving.

The Court: Oh yes, I am satisfied—that ruling will be adhered to. Go ahead Mr. Wilson.

Mr. Wilson: May we respectfully except to the Court's ruling?

The Court: Yes.

The Witness: That had been a good many years ago. I don't think I could tell the exact place, but I believe it was at the Adams Hotel where he was staying at that time. He was with a man by the name of Leavitt, Judge Flanigan, Dr. Ellis. I was not acquainted with Judge Flanigan nor Dr. Ellis prior to that time. Mr. Marquis outlined the plan he had for the organization of a holding company,

(Testimony of George H. Cornes.)

intending to form a life insurance company. He explained it to me and he explained what he hoped I would be able to do in the furtherance of the company as a salesman. I had many talks with Judge Flanigan, Dr. Ellis and some of the other men who were to be the incorporators, from the time I came here until the actual work started in selling. That was about the 28th or 9th of December. I took it up with Judge Flanigan, as I knew nothing of the organization, to find out what we could expect out of it, and he assured me that everything in it would and could point to a very fine organization. Judge Flanigan was attorney for the organization. He was one of the organizers and one of the directors. At that time he was a partner of William C. Fields, attorney. I didn't know Mr. Fields prior to that. I met him for the first time [594] after I came here. I joined in incorporating the company. I attended the preliminary meetings. After the articles of incorporation were filed, the organization meetings—up until probably in February. Then I was not in the city. My work was entirely out of the city. I might possibly be in not over two or three or four half days out of the month. I was working entirely in the southern part of the state and Mexico. I don't think I was ever on the Board of Directors. I think I was put on the Board of Directors and made Second Vice President in February or March. I think I was elected

(Testimony of George H. Cornes.)

President of the State Securities Corporation in 1931 or 1932. I was in the southern part of the state in the capacity of salesman for State Securities Corporation. I started out selling bonds of the company, later the stock. We had a bond that was a 5 year payment, 10 year endowment bond. A man would pay for the bond at the rate of \$150.00 a year until he had paid 5 payments on it. That was \$750.00. At the end of 10 years that bond matured for \$1,000. There was some other features by the way of a 5% bonus of stock when the bond was fully paid for. It had loan payments in it beginning the third year. My territory was from Tucson South. My first call in Tucson was made on Dr. Bledsoe in January, 1930. At that time he had no connection with State Securities Corporation. He had \$2,000 worth of stock in the Arizona Holding Company which we had to agree to absorb in some way. I saw Dr. Bledsoe in Bisbee. He was in the hospital and I explained to him how we were taking over this company. We were starting the State Securities Corporation with the intention of forming a life insurance company. He advised me to go and told me to go to his attorney here, Fred Sutter, and get his reaction on it and to come back. I went from there to Cananea, Mexico. I went over and talked to Mr. Sutter and he said he would make an investigation [595] of it. When I went back to Mr. Sutter I had asked Dr. Bledsoe to come into our company and to become one of the Board of



(Testimony of George H. Cornes.)

Directors. Mr. Sutter told me after his investigation it was the thing for Dr. Bledsoe to do and advised Dr. Bledsoe to become a member of the Board of Directors and Dr. Bledsoe did so. After my first talk with Mr. Sutter I went to Cananea, Mexico. A party in Tucson had given me a letter to Dr. Hogeland in Cananea. I went to Cananea, saw Dr. Hogeland, saw Mr. Hawk and Mr. Leonard. He was chief engineer of the Cananea Consolidated Copper Company. I told him the plan we had of forming a life insurance company. They all thought very well of it and came in with us, bought bonds, and in turn gave me letters to different department heads in the mine. That work kept me almost all of 1930 and '31, and after that many trips down in there later in selling insurance. Your permit only let you stay 5 days. You have to come out and when I would come out I would be in Phoenix for possibly half a day and then go to California. On my return I sometimes went straight down to Bisbee and from there on to Cananea. I made some sales in California. I was out in the field selling until the final dissolution of the company. I worked exclusively in Cananea, Mexico and Southern Arizona for the first three years of the company's existence. During those two years I would usually get in the office on Friday night. I would go to the office on Saturday morning, turn in what business I had. I was at the coast a good deal and would return sometimes on Monday morning. I would be in the office long

(Testimony of George H. Cornes.)

enough to get a route for the following week, usually leave Monday noon because I had to be in Bisbee before 5:00 o'clock. Sometimes I would stay in Mexico until Saturday morning and come back and be in Phoenix Sunday morning. That continued almost right up to the very end. My total time in the office over the [596] eight years was only Saturday mornings and Monday mornings. During the first two or three years I would not be in the office in excess of 2 or 3 or 4 half days a month. I was a member of the executive committee. I think I was made an officer of the company and a director of it. I believe it was Second Vice President. I had no business to perform as Vice President other than as a salesman. I believe I was elected President about 1932. It was prior to the consolidation of State Securities Corporation and the Union Reserve Life. After that I had additional duties of counter-signing checks and signing stock certificates. I would sign sometimes a book of checks and sometimes a book of stock certificates before I left the office and left them in the office. The checks had to be signed by two members, two officers of the company, either Mr. Harry Marquis or myself, and the signature of R. F. Marquis always had to be on the checks. I never did employ any of the employees of the company. I had nothing to do with it, with employment in either the State Securities or the Union Reserve. Mr. Marquis did that. I had nothing to do with directing the work of employees or keep-

(Testimony of George H. Cornes.)

ing the books of the company or making the entries, or with adopting the policies of the company, or the transaction of any business that came into the office, or the making of any loans or mortgages or with the issuance of any stock certificates, other than to sign them. I sold stock. Had nothing to do with the issuance of checks or distribution of funds of the company. The State Securities Corporation ceased to sell bonds about 1932. That was prior to the consolidation of State Securities with the Union Reserve. I don't know whether it was taken up with the Board of Directors, the stockholders, or whether Mr. Marquis simply said we weren't going to sell any more. I remember attending a stockholders' meeting of State Securities Corporation [597] on the 9th day of February, 1932, at which the matter of discontinuance of the sale of bonds and their redemption was taken up. We discussed the exchange of bonds for stock of the State Securities Corporation. I attended the meeting at which the redemption of bonds was authorized. At that time I was President of the State Securities Corporation, a member of the Board of Directors and a member of the executive committee. The plan to redeem the bonds was this: Sometimes the bonds were not paid for in full at the rate of \$150.00 a year. They were paid so much a month, so much per quarter, and all over the state there was a lot of bondholders who could not continue to make payments. It worked a hardship on them. We had their notes for

(Testimony of George H. Cornes.)

the balance. Some of the people could not go on with their bonds. They had lost their jobs during the depression. Many wanted to drop the bonds completely and lose \$150.00 or whatever amount they had put in, because the bond said there was nothing to come to them unless they had paid three premiums. A plan was worked out where Mr. Marquis, his brother and my self, out of our own holdings, allocated enough shares so that the stock could be used to pick up or cancel or redeem these bonds, so that the bondholders would not lose what they put in. This was done for a reason. In the future we expected these people would be insurance prospects. If they had lost what they had put in they would not be insurance prospects, and by taking up their bonds we would cancel any further payments they might owe. These bonds then were to be held in a state of status quo. That is, there was no more obligation against the bond. We had the right at any time, in fact, to demand that the bonds be paid by us at all, but the funds put on those bonds was to be used in the future development and management, expense and organization of any life insurance company that we might own or acquire in the [598] future. Those are the minutes of the meeting held February 9, 1932, when that matter was determined upon by the stockholders of the State Securities Corporation. Thereupon, minutes of the meeting of stockholders of State Securities Corporation, dated February 9, 1932, was offered in evidence and, with-

(Testimony of George H. Cornes.)

out objection, was received as Defendants' Exhibit AT in evidence, which abstracted to the issue is:

#### DEFENDANTS' EXHIBIT NO. AT

Being the minutes of the stockholders meeting of State Securities Corporation, held on February 9, 1932, being the stockholders' meeting at which it was determined and agreed that R. F. Marquis, George H. Cornes and Harry S. Marquis would give out of stock allocated to them by the articles of incorporation, a sufficient number of shares of stock to trade or substitute to the bondholders stock amounting in value to whatever had been paid by the bondholders, so that the purchasers of bonds would not lose entirely the money theretofore paid on the purchase of bonds.

The Witness: No bondholder was required to exchange his bond for stock, and no compulsion was used on any holder to compel him to trade. They could take advantage of the offer to trade and accept stock for what they had put in on the bond or not, just as they saw fit. [599]

All of the bond holders did not take advantage of this offer. I don't know how many kept their bonds. I have no personal knowledge of the matter. I worked toward the accomplishment of the redemption of the bonds. I don't know whether any charge was made against the State Securities Corporation

(Testimony of George H. Cornes.)

or the Union Reserve for the work I did in redeeming the bonds. I continued to sell stock for the company after that. After 1932 in Bisbee, the State of Arizona, Utah, California, and Old Mexico. In 1933 the State Securities Corporation absorbed the Union Reserve Life Insurance Company. I was only vaguely familiar with the details. I understood the object and purpose of organizing the State Securities Corporation was to do that very thing. I was vice-president and Secretary of the Union Reserve Life. I had duties as an officer in addition to my duties as salesman. Countersigning checks, signing policies that were issued and such other things as had to be done for convenience of the office force in transacting the business. They were left usually with Mrs. Hill or Mrs. Conway. I sold life insurance. I continued to sell life insurance and sold a good deal of it. My duties were selling stock and insurance. I first started working in Utah about October, 1934. I worked until about the latter part of December, 1934. I was paid commissions out of which I paid my own traveling expenses. My work had to do with the policyholders and stockholders. I did see them out in the field. They did ask me questions about their account and how the business was getting along. I would go into the office and ask some of the girls what a certain account was. What the bank balance was. How we stood with the Lincoln National and various other questions and I was always referred to Mr. Marquis. I would go

(Testimony of George H. Cornes.)

in to Mr. Marquis and he would explain them to my entire satisfaction. I would leave there apparently knowing everything that was going on. There was a running account between [600] the Lincoln National. Something about reserves and extension premiums about which I knew nothing. Our account with the Lincoln National was to my knowledge and belief always all right. When we had a death claim the Lincoln National would pay their part but I was always informed to see him when I would ask any information in regard to any files or anything of that kind. The \$10,000 loan testified to by Mr. Marquis from one of the statements was unknown to me until I heard it here in the courtroom. That was never disclosed by and of the girls or by Mr. Marquis. I had no personal knowledge of the mortgages that the company took and was not told about them at the time they were made. In Salt Lake City I received the letters marked Government's Exhibits 42, 43, 44 and 46 in evidence. I am familiar with the contents. I discussed the contents of the letters with Mr. Marquis after I returned to Phoenix. I had some knowledge concerning the subject of the letters before going out on these trips. The letter that speaks of a directed verdict I had been told about the case before I left. I think the letters were written for the purpose of gingering me up. To make me get out and go to work. I received repeated letters of that tenor from Mr. Marquis. I have found out since the company

(Testimony of George H. Cornes.)

went broke there was never any attempt at a legislative investigation. Some of the agents of the other companies at that time were trying to get a list of our policyholders. We happened to be writing more insurance at that time than any company in the state. I know J. Owen Ambler very well. I had previously sold him securities of the State Securities Corporation and had invited him to become a director of the company. He wanted to but his company would not allow him. He looked into the structure of the company. I told him the incorporators had been allocated 50,000 shares of stock. I didn't tell him whether or not I had paid \$10.00 or anything for the stock. That was all prior to June 27, 1932. Mr. [601] Ambler was fully acquainted with all the details. There seems to be some doubt whether I wrote this letter or not. I can't say. It was written in June, 1932. I remember talking to Mr. Ambler at Kensington Apartments in Los Angeles in regard to his bonds. I do not recollect ever having dictated or written such a letter. The statement in that letter, particularly with reference to my having paid \$10.00 for this allocated stock, was not true and Mr. Ambler knew before that date that it was not true. I don't think I dictated or wrote that letter. I had talked to Mr. Ambler about becoming a director of the company prior to the date of Government's Exhibit 40, that being June 27, 1932.



(Testimony of George H. Cornes.)

He wanted to buy the Phelps-Dodge Corporation for whom he was working refused to allow any of their employees to be directors in other organizations.

Thereupon document was received in evidence and marked Defendants' Exhibit AU, which being abstracted to the issue is:

#### DEFENDANT'S EXHIBIT NO. AU

Being a telegram from State Securities Corporation to J. Owen Ambler, Douglas, Arizona, and a letter from J. Owen Ambler, Douglas, to State Securities Corporation, refusing to act as director of the corporation.

The Witness: I recall certain mortgages that were executed by me as trustee and R. F. Marquis as trustee, to grapefruit land in Yuma County. I executed the two mortgages taken from Defendants' Exhibit AI for identification. I executed in conjunction with the mortgage dated the 9th day of February, 1934, that note of \$12,000. I did that as trustee for myself and others on the grapefruit land in question. I executed the note for \$17,500, dated September 7, 1936 and the mortgage which secures it.

Thereupon the documents were received as Defendants' Exhibit No. AI in evidence, which abstracted to the issue is:

(Testimony of George H. Cornes.)

DEFENDANTS' EXHIBIT NO. AI

Is the folder containing the note and mortgage, dated [602] September 7, 1936, executed by George H. Cornes, trustee, State Securities Corporation, covering Farm Unit M. and Farm Unit N., given to secure the payment of the note and the assignment of the note and mortgage by State Securities Corporation to Union Reserve Life Insurance Company and a cancelled note and mortgage executed by George H. Cornes, trustee to State Securities Corporation in the amount of \$12,000.00, covering the same land.

I executed the realty mortgage dated March 29, 1933 and a promissory note of the same date and also the mortgage dated September 7, 1936, and the assignments on the note bearing the same date. I executed these instruments as trustee. This is the note that the first mortgage secured. I believe that has to do with the transfer to the Corporation Commission.

Thereupon, without objection the document was received as Defendants' Exhibit AI-2 in evidence, which abstracted to the issue is:

DEFENDANTS' EXHIBIT AI-2

Being the realty mortgage dated March 29, 1933 and a promissory note bearing even date with it and a realty mortgage dated the 7th

(Testimony of George H. Cornes.)

day of September, 1936 and a note bearing even date therewith, executed by George H. Cornes, Trustee, covering the Yuma Valley citrus land in his name as trustee, together with the assignments on the note and mortgage dated September 7, 1936.

The Witness: When I executed the mortgages in 1933 on the grapefruit land, I delivered them to the State Securities Corporation, and when I executed the mortgages for the increased amount I delivered those to the State Securities Corporation. The mortgages were increased to use as a contributed surplus to the company. At that time I knew of the appraisals on the property. In 1937, my activities with the State Securities Corporation and the Union Reserve Life Insurance Company were selling insurance and selling stock. I know generally about the advance statements in evidence of the State Securities Corporation and of the Union Reserve Life Insurance Company. I had nothing to do with the preparation of them or with the keeping the books. I had nothing to do with the preparation of the reports to the Corporation [603] Commission except I signed the statement in three out of four instances. I had nothing to do with their preparation, the computations or supplying any figures or the giving of any information, contained in those reports. When I sold stocks, bonds and insurance I relied on these statements. We were

(Testimony of George H. Cornes.)

originally given letters of recommendation, facts and monthly statements which we used in selling. I have in my possession defendants' Exhibit No. AK for identification, a series of letters. I received them from Mr. Marquis.

Thereupon the letters marked Defendants' Exhibit AK in evidence were offered and without objection received in evidence as Defendants' Exhibit AK in evidence, which abstracted to the issue is:

#### DEFENDANTS' EXHIBIT NO. AK

Photostatic copies of letters to Union Reserve Life Insurance Company. Check in payment of premium by H. N. Chambers. Letter signed by J. Elmer Johnson, dated June 3, 1933. Letter signed by J. Elmer Johnson, dated May 1, 1933. Letter of recommendation of R. F. Marquis.

The Witness: These letters were letters recommending the company to the public. I relied upon the various statements that have been introduced in evidence. They were prepared in the office. The company employed bookkeepers and auditor Mr. Earl Canning who is a certified public accountant, and when the statements were made up, I relied absolutely upon their truth. I displayed them to various prospects, to the public generally, and had no reason to question any of the statements. The reinsurance contract with Lincoln Life Insurance Company

(Testimony of George H. Cornes.)

means that a certain share of the premiums collected by the Union Reserve was paid to the Lincoln National, and they in turn carried a part of the risk, and in the event of loss or death, the Lincoln National would pay part of the loss. I think that contract was in effect in the Union Reserve prior to our taking it over. I think the Union Reserve under the contract retained \$2500 of the risk.

[604]

That means if a \$10,000 loss was had, the Union Reserve would have to pay twenty-five per cent and the Lincoln seventy-five per cent. In some cases the retention was raised to \$4,000. I know that the contract was cancelled by the Lincoln National. Whether it was a definite cancellation I can't say. My understanding was that it was cancelled as of October 1, 1937. On that date I had no knowledge of the cancellation or that they intended to cancel. No one connected with the State Securities Corporation or Union Reserve ever told me. I subsequently learned it had been cancelled, I believe on the 28, 29 or 30 of December, 1937, in the office. On December 28 or thereabouts there was a loss suffered on the day previous. Nathan Bankhead had died. He carried a \$20,000 policy. When I learned of his death I went to the office. I saw Mrs. Hill and Mr. Hamilton. I was informed then that the reinsurance contract was cancelled. I found that out after Mrs. Hill gave me the file. I then wrote a letter to the Lincoln National. The letter was

(Testimony of George H. Cornes.)

written in the usual course of business on that particular date. This is a copy of the letter. The document was marked Defendants' Exhibit AV for identification, was offered in evidence, to which objection was made that it was self serving, which objection was by the court sustained, and to which an exception was taken and duly entered in the record.

The Witness: After writing the letter I called Mr. Marquis in Salt Lake City. He returned to Phoenix three or four days after that. The Lincoln National Life contract was subsequently reinstated, about the 19th of January. After Mr. Marquis returned, he advised me that Mrs. Bankhead was going to take the proceeds of the policy on an annuity basis. After the 19th of January, 1938, in fact on the 16th or 17th of February, the Lincoln National wired us that if the premium was not paid before Saturday the reinsurance would again be cancelled. I saw the [605] wire but didn't have a chance to read it the day it came in. I saw it on Friday noon. Mr. Harry Marquis and Mr. Hamilton were there. I immediately called Mr. Fields, the attorney for the company, and called the Lincoln Life. As a result of that call a check for \$2,000 was sent the Lincoln National and a wire sent that afternoon renewing our contract for reinsurance until the 10th of March. The \$2,000 check was sent from the Union Reserve Life. There was a deal entered into between the officers of the Union Re-

(Testimony of George H. Cornes.)

serve and the Republic National of Dallas, Texas looking toward selling the Union Reserve Life Insurance Company to the Republic National. Prior to that Mrs. Bankhead came in and required the full amount of her policy paid to her in cash. It then was apparent that our capital was impaired. The meeting with Mr. Beasley, Mr. Hastings, the attorney for Republic National, and Mr. Mott, their actuary, was on Sunday, the week preceding the Sunday before the company was turned over to the Corporation Commission. There was present at the meeting, in addition to those mentioned above, I think another actuary, Mr. Marquis, Mr. Fields, Mr. Hamilton, Mr. Harry Marquis and myself.

Thereupon objection was made by counsel for the plaintiff to any transaction occurring on that date for the reason it is long after the allegations in the indictment. It would be entirely self serving, which objection was by the court sustained and an exception to the ruling of the court duly taken and entered of record.

The Witness: I am acquainted with Mrs. Bonar who testified. I sold her some stock in the State Securities Corporation in 1930. Shortly after February, 1930, I went in there. I had been going in there possibly three or four times calling on Dr. Hogeland and others. Dr. Hogeland, Mrs. Bonar and Mr. Hauck owned some property in Yuma. Dr. Hogeland said that he would like to dispose of his holdings in Yuma and asked me if

(Testimony of George H. Cornes.)

I would look at [606] them. I did and Mr. Grant looked it over. Dr. Hogeland introduced me to Mrs. Bonar. I had previously talked with Dr. Hogeland. The conversation had to do with the grapefruit land he contemplated trading for stock in the State Securities Corporation. I had already agreed to it. I knew Mrs. Bonar had an interest in that with Dr. Hogeland. I don't think he had to get her consent. I think it was an undivided interest. Dr. Hogeland introduced me to Mrs. Bonar. I didn't make any independent call on her. I sold Mrs. Bonar stock in exchange for grapefruit land. I think some 2050 shares. I told Mrs. Bonar that it was a new company; that the object was to either organize or acquire a life insurance company, and that was the object and purpose of financing the State Securities Company; that they had to comply with laws of the state which required certain reserves before they could start a life insurance business. I did not represent to her that there would be paid an immediate dividend, but said that perhaps in two or three years there might be two or three or perhaps four dollars from dividends paid. No definite time was fixed. It depended upon the success of the proposition. She understood that. I know Mr. Palmer. Mr. Hamilton went with me when I called upon him. I told Mr. Palmer that a stock bonus would be paid. I told him that the stock probably would earn dividends in the future and he would receive those like every company



(Testimony of George H. Cornes.)

paid that is doing a successful business, and those were the facts. I know Mr. Link who appeared here. I did not sign the letter marked Government's Exhibit 54 in evidence, dated November 7, 1934 addressed to H. F. Link at Prescott. I did not dictate it. I know nothing about it and never saw it until it was produced here in court. That is not my signature. At the time I was in conference with Mr. Link trying to sell him some stock, I didn't tell him that some other life insurance company was about to take over the Union Reserve [607] Life Insurance Company. I did tell him that later after I sold him the stock about a year after that. Mr. Marquis had gone east to see about a company back there. I believe it was called the Corn Belt Life. Mr. Link used to come in the office quite often. I told him subsequent to the purchase that the Corn Belt was contemplating taking over the Union Reserve or consolidating. The company tried to ascertain the wishes of the stockholders as to whether they wanted to consolidate. I didn't make any such representations as an inducement to him to buy stock. I told Mr. Link that no dividends were being paid, but all earnings were being put back in the business. Those were the facts. I sold Mr. Haymes stock about the middle of 1937. I made an agreement with him that in the event he wanted to turn back that stock after January 31, 1938, I would either take it my-

(Testimony of George H. Cornes.)

self or sell it for him. Mr. Haymes asked me to take the stock back about a month after the companies failed. He came to my house about eleven o'clock at night and I told him I would be only too glad to take up the stock subscription. He had paid a part of his note. He had paid \$250 cash and gave a note for \$250. The note was to be paid off in six months time with the understanding that any gas, repairs or work on my automobile would be credited on that note in the office. That was done to the extent of about \$212 or \$218. I told Mr. Haymes I didn't think he should stand a loss on equipment he had furnished me and I would be glad to assume that as my personal obligation, and he would not have to pay the note. I couldn't pay him in cash. I gave him my note. I have entered into an indebtedness to him of his total investment. I never represented to any purchaser of stock at any time that a cash dividend in any amount was going to be paid on or about January 1, 1938. I never represented to any person that any dividend at any definite date would ever be paid on this stock. I did say a stock bonus would be paid [608] but not a cash dividend. Along in the summer Mr. Marquis' brother and Mr. Hamilton and I agreed we would take out of our own holdings enough stock when it was issued to us to pay out to everyone, people we had sold, a five per cent bonus. It was not a dividend. It was a stock bonus. It was done in the interest of increasing our insurance busi-

(Testimony of George H. Cornes.)

ness. I sold Mr. Gerald Palmer after this agreement was entered into among us. I sold Mr. Haymes after the agreement was entered into to give a stock bonus after January 1, 1938.

Thereupon Defendants' Exhibit I, consisting of the itemized list of withdrawals charged against defendant Cornes by witness Hair were offered and without objection received in evidence and marked Exhibit I in evidence, which abstracted to the issue is:

#### DEFENDANTS' EXHIBIT No. I

Consisting of work sheet of witness Hair showing an itemized list of the withdrawals from the two companies of defendant Cornes.

The Witness: I never did withdraw from the State Securities Corporation or the Union Reserve Life Insurance Company or from the two jointly the sum of \$88,000 or more dollars. I did not withdraw any portion of the check marked Defendants' Exhibit AE for identification. I have no knowledge of it. I didn't withdraw check 8683 of the State Securities Corporation or any portion of it and received no benefit from it. I did not draw the amount represented by Defendants' Exhibit AV for identification, being check 8003 of the State Securities Corporation in the sum of \$79.20. I got no benefit from it. I did not withdraw the amount of money or any portion of the amount of check

(Testimony of George H. Cornes.)

8206 in the sum of \$207.13, payable to Occidental Life Insurance Company. I never had any dealings with the Occidental Life. The check was given for the payment of Mr. Harry Marquis' life insurance. I didn't get any part of check 8266 of State [609] Securities Corporation in the sum of \$250. I didn't withdraw the money represented by check 6984 and I didn't get any benefit of that money. I didn't withdraw the money on check No. 7286 or any portion of it. I didn't withdraw the money represented by check 7212 or any portion of it. I didn't receive any money or withdraw the money represented by checks Nos. 7850, 7937, 7287, 7326 nor did I withdraw the money or receive any benefit from check 7303, 6752, 6753, 6787, 6780, 6852, 6748, 7076, 8487, 8592, State Securities Corporation, 8549, State Securities Corporation, 8589. I think check 8697 is mine. I did not receive any portion of check 8834. I might have received the benefit of check 8856. I did not withdraw the money nor receive any benefit from checks 8859, 8861, 8871, 8890, 8908, 8914, 8919, 8921, 8946, 9059, 9103, 9104, 9111, 9123, 9201, 9205. 9213 could be mine. I had an account at the Westward Ho Garage. I didn't know until two or three days after this trial that the government claimed I withdrew \$88,000. I learned that through the testimony of Mr. Hair. Since then I have gone through as many of the checks as possible, gone probably two years and picked out the

checks that are not mine. I have not been able to investigate the cash withdrawals or cash retained by the officers listed by Mr. Hair in forty or fifty receipt books. I have been able to work about three and one-half hours on the Union Reserve Life Insurance Company. I would say so far as I have examined that I have probably examined a fourth. I have not been able to trace many checks to their ultimate sources. We traced quite a number, but have not been able to trace them to every person to determine whether I got any of them. I didn't withdraw the amount nor get any portion of the amount shown by checks 9269, 9273, 9277, 9278, 9331 or 9372. 9386 might possibly be mine. I didn't withdraw or get any benefit from check 9410. A part of 9415 might have been mine. [610] I didn't receive any portion of checks 9431, 9437, 9448, 9464, 9497, 9535, 9538, 9617, 9620 and 9621. I didn't withdraw or receive any portion of the money from checks 9634, 9641, 9650, 9651, 9672, 9697, 9606, 9710, 9732, 9747, 9749, 9776, 9859, 9882, 9899, 9923, 9929, 9993, 10029, 10039, 10070, 10178, 10179, 10189, 10220, 10236, 1123, 1154, 1438, 1689, 1733, 1885, 1934, 2075, 2107, 2264, 2366, 2576, 2723, 2938, 3406, 3424, 3631, 4142, 5464, 5607, 5642, 5673, 5776, 5792, 6203, 6431, 6507, 6518, 289, 292, 181, 7238, 7177, 7738, 7947, 8216, 8221, 8293, 8403, 8433, 8437, 8467, 8482, 8489, 8498. [611] I cashed check No. 9383 drawn against the current account of State Securities Corporation for

(Testimony of George H. Cornes.)

\$475.00. The other checks I identified were against the State Securities. I think I remember that there was a reserve account opened in 1936 for the Union Reserve Life Insurance Company. I did not get check No. 4, No. 64 drawn against the reserve account for the Union Reserve Life. I did not withdraw the money nor get any portion of the money represented by the following checks against the Union Reserve Life: Nos. 7156, 7189, 7359, 7511, 7550, 7590, 7703, 7746, 7764, 7790, 7794, 7800, 8002, 8014, 8099, 8144, 8230, 8290, 8300, 8349, 8424, 8470, 8542, 8683, 8766, 8816, 8859, 8997, 9113, 9019, 9142, 9268, 10997, 11006, 11016, 11107, 11022, 11128, 11158, 11167, 11170, 11068, 11153, 10728, 10747, 10819, 10637, 10638, 10369, 10375, 10661, 10409, 10417, 10479, 10559, 10615, 10313, 10247, 10128, 10151, 10158, 10159, 10160, 10069, 9936, 9958, 9883, 9638, 9691, 9522, 9445, 9468, 9369, 9376 and 9283. I did not have the itemized list made by Mr. Hair at the time I checked over the checks at the State Capitol. I was not permitted to take that exhibit out of Court to check. We had to do the best we could with the checks. The entry in Government's Exhibit 22 under August 27, 1936, showing receipt from Robert Cushman, \$400.00, was not a cash withdrawal. It was not a withdrawal of any kind from the State Securities or Union Reserve. Mr. Cushman painted my home. I paid him \$400.00 in cash and was to

(Testimony of George H. Cornes.)

give him the other half, \$400.00, in my personal stock which was to be delivered to him when I got it. I didn't withdraw in cash the amount charged against me, made payable to William Norman. It was exactly the same kind of a transaction as the Cushman matter for landscaping my yard. There is another \$400.00 item on rugs that was the same thing. I never drew any money on any of those items. During my 8 or 8½ years with the company I brought in [612] in cash or acceptable securities in excess of \$350,000. I earned a commission on that like all the rest of the salesmen. It was 15 and 25%. It would about average 20%. The amount of insurance I wrote would probably run nearly three-quarters of a million dollars. My commission on that was 75% of the first year's premium. I sold approximately 300 bonds. I expended for travel during the period of time I was connected with these companies about \$25,000 for about 400,000 miles of travel. That was paid by me out of my earnings from the companies. I bought five cars during that period. They were paid for by me. I drove between 45 and 50,000 miles a year. I found checks charged against me in going over the list which were for purely traveling expenses. I never withdrew one cent of money from either State Securities or Union Reserve that I did not earn through commissions. I know that the executive committee meetings of the State Securities Corporation were not held on an average of once each month

(Testimony of George H. Cornes.)

as shown by the minute book, Government's Exhibit 26. I never attended executive committee meetings once a month in either company. I attended stockholders' and directors' meetings. We probably got together as executive committee once or twice. There are dates of executive committee meetings when I was in Los Angeles, one when I was in Del Monte, California, some when I was in Salt Lake City. I did not attend any of the purported meetings of the executive committee. I was probably in the office of the State Securities Corporation on Saturday morning. Salesmen's meetings would be held then. Some of the salesmen would be present, but I was not at all of the meetings. Twice I recall that entertainment was given the salesmen at the meetings. The same is true of the meetings of the Union Reserve Life Insurance Company. I don't think I find any executive committee meetings, and where my name appears it is not my signature. [613] I think the ones that I signed were directors' meetings or stockholders' meetings. I did not sign Government's Exhibit 36. It looks like a copy of my signature. When I first saw the statement some portions of it were not there as it now appears. The first page wasn't on it. In selling stock and securities of the State Securities Corporation and life insurance for the Union Reserve, I relied upon the statements that were published by the companies from time to time. They were made up by the bookkeepers and



(Testimony of George H. Cornes.)

certified by a public accountant, and then shown in Best's Reports. I had nothing to do with those matters. I had no reason to suspect any of the statements. I never made false representations to purchasers of stock or securities of the State Securities Corporation and of the Union Reserve Life Insurance Company. I never represented that the shares of stock of the corporation would pay big dividends and that a dividend of 7% or more would be paid within a year. I never made that representation to any person. I never represented to any person that in December, 1937 a dividend had been voted by the directors of the corporation and that a dividend would be paid in January, 1938. I did represent that the officers of the corporation and of the insurance company were not drawing salaries from either of said companies. That was true. I never led anyone to believe that the salesmen of the company were not being paid commissions for their services. I did represent that the State Securities Corporation was in good financial condition and that on December 31, 1936 it had excess assets over liabilities in the amount of \$135,660.41. I relied upon the truth of the statement of that year. I never made any representation about the mortgage loans being increased any percentage. I displayed the statement. I know nothing of those percentages. From the statement the company had \$22,574.50 in bonds, stocks and cash items on hand

(Testimony of George H. Cornes.)

and [614] on June 30, 1937, 10,022 shares of capital stock were outstanding. I never at any time knowingly made any wrongful representation to any person in order to sell securities of the company or the life insurance.

### Cross Examination

Mr. Whitney:

The Witness: I couldn't tell when I first saw Government's Exhibit 36. I could not have seen it before November 26, 1937. If I saw it at all I saw it after that. When I first saw it, the first page was not there. The second page was. I don't remember whether all of the third page was or not. I didn't see the original, I saw a stenciled copy. I didn't sign any original. I signed three of the statements, being part of Exhibit 7 in evidence. The one I didn't sign was the 1934 statement. I didn't examine the complete statement when I signed it. Mr. Marquis explained it to us. There is no stockholders' meeting of May 15, 1935, or February 13, 1934 shown by the minute books of the Union Reserve. Saturdays were generally the agents or salesmen's meetings, and no executive committee meetings were held on Saturday until in February and March, 1938. Myself and Mr. Hamilton called upon Mr. Palmer. I don't recall exactly what Mr. Hamilton said at the time. I believe Mr. Palmer and Mr. Hamilton done most of the talking. We were the only three there. I didn't hear Mr. Hamilton say anything that was in any way wrong. It was just

(Testimony of George H. Cornes.)

ordinary sales talk and no misrepresentation was made, in any way, shape or form. The first I knew of the cancellation of the reinsurance agreement with Lincoln National was the 28th of December, 1937, when I met Mr. Hamilton and Mrs. Hill in the office. I think Mrs. Hill was the one who told me. Mr. Hamilton was present. He said he had not known of the cancellation. I don't think I sold any stock between the 28th of December and the 1st of January, 1938. I got in touch [615] with the Lincoln National Insurance and the reinsurance agreement was reinstated on the 19th of January. I believe that the statements of the Union Reserve were true and correct, and I still think so. Thereupon, certain documents were received as Defendants' Exhibit AW in evidence, which abstracted to the issue are:

#### DEFENDANTS' EXHIBIT AW

The checks of Union Reserve Life Insurance Company that were identified by the witness Cornes, being the checks numbered as set out in evidence and in the bill of exceptions.

The Witness: If the Union Reserve statement was correct, the company should have had money enough to pay off the Bankhead claim without any reinsurance. I am acquainted with Best's Life Insurance Reports. It is an analysis of statements and condition of life insurance companies. I do not know how Best's get the statements. I imagine

(Testimony of George H. Cornes.)

from such documents as Exhibit 7 in evidence here, which are filed before the Corporation Commission. The book is published about the month of May in each year. Sometime after the report is due to the Corporation Commission on March 1. If the Union Reserve Life Insurance Company statement was correct and they had a net reserve at the end of 1936 of \$105,823, and the capital and surplus as of that date was \$121,092, I think the company could pay the \$20,000 death loss whether they were reimbursed or not. I do not know anything about accounting. I think all reserve on policies is for death losses primarily. I didn't know the reserve of the company was insufficient to pay the \$20,000 death loss prior to December 28, 1937. I didn't know it at that time. I knew nothing of the condition of the company except as shown by the 1936 statement. This death loss occurred before the 1937 statement was made. The only thing I had to go on was the statement that [616] was handed to me the end of each year, and that is shown in Best's and also from Dunne's. There were three people present when I learned of the cancellation of the reinsurance, myself, Mrs. Hill and Mr. Hamilton. I called for the file, saw the letters that had been written prior to that date. I wrote a letter to the Lincoln National, told them Mr. Marquis was out of town, but would be back about the first of the year, and that steps would be taken when he returned to either pay the reinsurance contract in

(Testimony of George H. Cornes.)

full by cash or by mortgages or collateral put up with them. That was done immediately upon Mr. Marquis' return. I called him the same day and told him to return to the office. My understanding was that the contract of reinsurance was retro-active. On the 17th of February, I found that the reinsurance contract would be again cancelled by that night if the contract was not paid. I sent \$2,000 and that was accepted and the contract reinstated until the 10th of March. Before that we went into receivership. Mr. Hamilton was present on February 18, 1938. Ora Hill was bookkeeper for the Union Reserve during 1937 and until the company closed. We agreed among ourselves to pay a stock bonus of 5%. We made this agreement in the summer of 1937. I think Mr. R. F. Marquis, Mr. Harry Marquis, Mr. Hamilton and myself were all present. I know Mr. Hamilton had never been issued any stock. I don't know certificate 912 was issued. If it has my name on it, it was because I had signed it in blank. I didn't have any understanding that the certificate was to be issued. I don't know whether any stock was issued after February 7, 1938. No stock was sold out of the certificate #for 23,315 shares, made to Marquis, Cornes, Marquis and Hamilton. I don't know anything about the books of the company. I never heard of the Marquis, Cornes, Marquis and Hamilton account. I didn't keep track of the Marquis, Cornes [617] and Marquis account to see how I was being treated in that

(Testimony of George H. Cornes.)

account. It was six or seven, or maybe nine months after Mr. Hamilton went to work before I became well acquainted with him. He was in the office a long time before I had more than a speaking acquaintance. The company moved to Luhrs Tower before Mr. Hamilton went to work. I didn't see Mr. Hamilton's name on any door in the office. I don't remember whether I was at the meeting of February 11, 1936 shown in Government's Exhibit 26. I remember some of the things in the minutes. I couldn't give you the names of everybody present. I do know there was a meeting in substance to what is purported to have been here. The minutes give a lot of names. I know all of those people were not there. Some of them were. I can't say that I actually remember E. G. Hamilton being there. I have never attended any meeting presided over by H. S. Marquis. I think the meetings described as executive meetings were salesmen's meetings. I don't remember attending any of the executive committee meetings. I don't think any such meetings were held. These matters were taken up with me personally in my office or when I was in his office. No meetings were held. The salesmen's meetings were addressed by different men that Mr. Marquis would bring in. I know about the William Hansberger mortgage, but I don't know anything about any executive committee meeting. I attended all the stockholders'

(Testimony of George H. Cornes.)

meetings and all the directors' meetings of both companies, but I can't tell you about any particular meeting. The minutes of February 9, 1937 and February 8, 1938 don't show who the stockholders were nor who was present. I was secretary of the Union Reserve Life Insurance Company for some period of time. I don't know whether I signed any minutes of directors' meetings or not. They were gotten up considerably afterwards. I don't know when they were dictated. They were made up at some future time and [618] they would not be signed by me until I got back from my trip. I did not examine the minutes to determine whether they were correct or not, and I signed them merely as secretary just as I signed the checks and stock certificates. I can't tell you the names of any stockholders at any of those meetings. Sales meetings and directors' meetings I was present. Others I don't know who was there. I can't tell you. I know Mr. Marquis and his brother would be there. At the annual meeting shown by Government's Exhibit 27C in evidence, Mr. H. M. Fennemore was not present. Mr. J. C. Halstead was not present. I don't know whether the stockholders of Union Reserve Life were the same on March 4, 1938 as they were on January 14, 1936. I was at all stockholders' and directors' meetings, but I can't go back to any one meeting and designate who was there. I signed the minutes, but I didn't write them up. I probably did not read

(Testimony of George H. Cornes.)

them before I signed. I was not present at the executive committee meeting on April 4, 1936. [619]

The status of mortgage loans was never brought out at any meeting. The meeting of April 4 or May 4, 1936, was a salesmen meeting and not an executive committee meeting. The meeting of June 6, 1936, was not an executive committee meeting, it was a sales meeting. I don't know who was present. I didn't attend the meeting on July 6. There was no meeting of the kind mentioned in Government's Exhibit 27B in evidence, August 8, 1936. The mortgage was made up, brought in to me for signature and I signed it. There was no executive committee meeting on September 5, 1936. I know about the Turner loan of \$2,500.00, but it was not taken up in an executive meeting. There wasn't any executive committee meeting on November 7, 1936. Mr. Miller and Mr. Master came over from New Mexico to discuss the consolidation of their company with ours. I don't know what the talk was. Mr. Marquis was the actuary and the details were left to him. The Hansberger and Winchell policies were never taken up in executive committee meetings. They went through the regular course of business and were approved in the office by whoever was in charge of death claims. I remember the stockholders meeting held January 12, 1937. The minutes show some that were present. Mr. Fields was there, he was not a stockholder but was attorney for the company, that is, the Union Reserve. There was present at



(Testimony of George H. Cornes.)

that meeting 959 shares in person and by proxy. Mr. Fennemore and Mr. Halstead were not there. I imagine Mr. Fields and myself examined the proxies. I don't know any other stockholders in the Union Reserve other than you have mentioned. I remember signing the minutes of the meeting of directors held on the 12th of January, 1937. I didn't dictate any of the minutes. Mr. Marquis would have them prepared and I would sign them afterwards. I couldn't say there was a meeting on March 29, 1937. I see in the minutes Mr. Hamilton marked as Vice-President and elected. I think he was elected but I don't know when. [620]

#### Cross Examination

By Mr. Flynn:

The Witness: Along about 10:00 o'clock in the morning on Saturdays, all salesmen would meet. The officers who were in the office on that particular day would be there. If I was there I would be present, Mr. R. F. Marquis, Mr. H. S. Marquis, and Mr. Hamilton. There would be a discussion about the affairs of the company, new sales plans, death losses would be explained, and business generally discussed. These were not executive committee meetings, they were salesmen meetings. I first met R. F. Marquis in Laramie, Wyoming in May or June, 1929. I met Harry Marquis between June and October of 1929. I think I met him in Denver. I was salesman in the company that R. F. Marquis was

(Testimony of George H. Cornes.)

either salesman or secretary, in Denver, Colorado. I left there about October, 1929. Mr. Marquis left shortly after I did. I think I met him in Phoenix the 9th or 10th of December, 1929. We never worked together. I worked in Colorado Springs. I went from there to Los Angeles. I saw Mr. Marquis once or twice in Los Angeles and discussed with him the formation of a company in Phoenix. The first time I discussed it with him here was the day after I arrived. I became associated with the company some time in December. I started work the day after the permit was issued to us. I think the first man I sold was in Glendale. I went to Bisbee about the first of January, 1930. After I talked to Dr. Bledsoe and Mr. Sutter, Dr. Bledsoe bought some bonds and later became connected with the company in an official capacity. I understood the proposition between our company and the Arizona Holding Company. I explained it to Mr. Sutter. My first office in the State Securities Corporation was Vice-President. Later I was elected President. My duties as President was to sign checks and stock certificates in blank and sell stock and bonds. All I did was sign blank checks, blank stock certificates, sell stock and attend meetings of the Board of [621] Directors. I told prospective purchasers my connection with the company. I told them and sold on the statements that was to the best of my knowledge and belief correct and explained how I understood the statement, why it was given to me and by what authority

(Testimony of George H. Cornes.)

it was made out. The plan for redemption of the bonds was first mentioned in 1932 I believe. The sale of bonds started with the beginning of the company. The bonds didn't provide for any interest. There were two different types of bonds. Some were fully paid bonds. I don't know whether the provisions were the same all the way through. The bond, Government's Exhibit 55, provides for a loan after payment of the third years' premium. The loan value is on the back. There was a few bond holders requested cash loans. I went out and took an active part in the retirement of the bonds in exchange for stock. The stock used in exchange belonged to Mr. Marquis, his brother and myself. We donated it. It was the allotment made to the organizers of the company. There was 9,000 *share* allocated to me. I don't know why I was given 9,000 shares of stock except that it was because I was a good salesman and I put a lot of work in the company. I think up to the present time there has been three shares of stock issued to me out of that 9,000. The first sales of stock were at \$10.00 per share. I didn't get any commission on the stock that was exchanged for bonds. I presume there was a running commission account for me. When I drew a check that check would be charged to me. I never made any examination of the books of the company to see what was being done in connection with the commissions on the stock that was exchanged for bonds. I don't know how long I worked at exchanging stock

(Testimony of George H. Cornes.)

for bonds, probably two years. I don't know anything of the inside of the books or how they were handled. I knew I drew money that was supposed to be charged to me as commission. The purpose of selling the bonds was to build up a reserve and have funds to take over or [622] organize a life insurance company. The stock was sold for the same purpose and that purchasers could expect their returns from the State Securities Corporation. I told them that they would get returns from any profit made by either company because the profit of the Union Reserve Life reverted to State Securities. I told them the profits made from the life insurance business would go to the State Securities Corporation. That the life insurance company was going to be owned by the State Securities and that they could expect earnings from that company on their investment. I became Vice-President and Secretary of the life insurance company. One of my duties as Vice-President was to countersign blank checks. I had to sign policy forms, be at directors meetings, stockholders meetings and sell stock and life insurance. I was out town practically all the time from 1930 up to 1938, from Monday night until Friday evening or Saturday morning. There was no particular designation of territory for any salesman. I had very little work around Phoenix. That is my signature on check No. 10369, dated January 25, 1938. It is my signature on Check No. 10309, dated December 21, 1937. I can't tell you about the particular transac-

(Testimony of George H. Cornes.)

tion. I might have endorsed the check and left it with Mrs. Cornes. It was cashed at Pay 'N Takit. I might have been here and I might have endorsed the check in the office before I left. That is my endorsement on check No. 10,011, dated February 19, 1937. I imagine the transaction took place here in Phoenix. The top endorsement on No. 9975 is mine. That is dated February 2, 1937. I could have been in then Tuesday morning. I endorsed check No. 7937, dated January 17, 1935. I don't know whether I was in Phoenix when that transaction took place or not. Whether the check was given to Mrs. Cornes or whether I was here. The top endorsement on check No. 7878, April 2, 1935, is mine, the next one is my wives. I was probably in Phoenix that day, [623] got the check and gave it to Mrs. Cornes. The top endorsement on check No. 8588, January 24, 1936, is mine. That check was signed by me and apparently mailed to the People's Finance and Thrift Company. I may have been in town on a good many Tuesdays. The company was not to pay my traveling expenses. They were charged to me on my account. I was not to pay all my own traveling expenses if I went out to contact a policyholder for a renewal premium, I think that was charged as expense for the company. [624]

When I was selling stock and bonds I was paid a commission. There was no expense account from the company for traveling or anything else unless I was on business for the company independent of

(Testimony of George H. Cornes.)

the sale of stock or bonds. The company paid none of my traveling expenses. My gasoline bills and my car expense was charged to me personally. I think the company sent the check and then charged it to me. There would be a withdrawal charged to me. When I would leave on Monday or Tuesday morning I would draw a check from \$30.00 to \$45.00. I relied solely upon the statements issued by the company as to its financial condition, earnings etc. I never made any independent inquiry as to how the company stood financially. I talked it over with some of the directors. We took the statement as it was issued. I have asked the girls at time about things in the office and was always referred to Mr. Marquis. Apparently from Government's Exhibit 44 in evidence I sent \$582.49 in from Salt Lake City, Utah. That was cash received from building and loan certificates from Salt Lake City. There were two or three, I don't recall the names. I transferred stock for it. I disposed of the certificates and remitted the cash to Phoenix. According to the letter, all of that remittance was distributed for my benefit and some in excess of the amount remitted by me. It is merely charged against my account. I said I didn't remember the letter to Mr. Ambler. I don't deny I had written it. I remember this letter in 1932 and I remember talking to Mr. Ambler in Los Angeles. Mrs. Anderson said my initials were on the lower part of that letter and that she typed the letter. The incorporators did not pay \$10.00 per

(Testimony of George H. Cornes.)

share for the stock allocated to them. The Marquis boys and myself bought out Mr. Leavitt and Mr. Kerby. I don't think there was any cash transaction at all. I think Mr. Kerby released his stock in our company for the release of our part of stock in his company. I don't know what [625] was paid Mr. Leavitt. I don't know whether it was a company or my personal check or whether it was cash, and I don't know the exact amount. When I was out selling, I drew a check from the company for expenses and that was to be charged to my commission account. How it was done in the books I cannot say. I paid my own traveling expenses. I think the mortgages on the Yuma land was charged once. The original mortgage and the next time the mortgage was given for a greater amount. This property was paid for with stock of the State Securities Corporation. That stock had been issued to Mr. Marquis by the Corporation Commission personally. There was a block of 5000 shares issued to him. I think that was the first issue of the escrow stock. I don't know whether the certificates had been issued to Mr. Marquis or had been written up in the stockbook when they were issued to Mrs. Bonar. I was to have a twenty five per cent interest in the place that was paid for with this stock. When I sold stock I told purchasers the stock was sold for the purpose of building a life insurance company. I told them the stock I was selling was

(Testimony of George H. Cornes.)

privately owned by me and other incorporators. That was on the application. I told them there would never be an excess of 50,000 shares issued. I explained to them that we were given 50,000 shares of stock and a donation of our stock was made by all of the incorporators to the State Securities Corporation. This was done so that the total issue of stock would not exceed 50,000 shares. While it reduced our interest in the company, at the same time it would balance out alike because there was a less number of shares outstanding. I told the purchasers the net amount paid went into the company. I didn't tell Mrs. Bonar that because that was our personal property. There was no difference except that had been issued to Mr. Marquis. I don't remember how my interest in the land came to me. I had a contract. I think I got it shortly after Mr. Leavitt went out. [626] I was given a quarter interest and Mr. Harry Marquis was given a quarter interest by R. F. Marquis and Mr. Leavitt. I didn't pay anything for it. We owned the property until after the company dissolved and then turned it over to the Corporation Commission. I don't know how the maintenance was charged. I don't know whether it was charged part to me or whether it was charged to the State Securities Corporation. Checks were issued from the office. I presume they were issued by the company. I don't know anything about the company's books. I don't know what distribution was made. I think some of the taxes were charged



(Testimony of George H. Cornes.)

to me as trustee or charged to me personally. I do not believe there was any payments made on the mortgages to the company. I do not think they were due. I don't know anything about whether the interest was paid. I don't know what return of the income to the company came from the mortgages. That is not my signature on Government's Exhibit 7 for the year 1934. I don't know anything about the report except that I signed it. I believe the law requires that a report be filed every year. In the sale of insurance I relied upon Best's, the Spectator and Dunne's Reports of companies. I became acquainted with Best's Insurance Reports in 1933 or 1934. From that time on in selling insurance I relied on Best's, the Spectator and others. I don't know how Best's Reports got the information they used in making the report. I do not know that Best's report coincided with the one filed with the Corporation Commission. I don't believe I ever analyzed statement to see whether Best's Report was right or not. I relied upon the company, the actuary, the public accountant, the State Department and the reports given out by them. I don't suppose I made any effort to find out how Best's and other insurance reports got their information. I didn't know that it came from the reports filed with the Corporation Commission. I don't know where they got it. I relied upon it because I believe [627] they are accepted authority. I don't know what their analysis is based on. I signed the report

(Testimony of George H. Cornes.)

according to the best of my information, knowledge and belief they were correct. I had no knowledge except that given to me by the bookkeeper hired by the company, certified public accountant, and the state department. They renewed our licenses each year, and Dunne's Report put it out. I found out after the 28th of December that the reinsurance was not paid. I sold stock just prior to that for probably \$25.00 per share. I do not believe there was any stock sold from the 28th of December to the first day of January. I imagine it was still \$25.00 a share. I believe I sold some after the first. There was no reduction in the price of the stock the State Securities Corporation sold after December 28. I made the same representations to the purchasers after January 1, 1938, that I had made in 1936 and 1937. Mr. Hamilton was present on December 28 when I came into the office. I have a vague idea of what the item "reserve for outstanding policies \$105,822.43" in Government's Exhibit 36 means. That is the amount of money to set up to pay loan values and death claims and maturity value of any endowment policies. I felt because of this apparently large reserve that the company was probably solvent, sound and able to pay ordinary death losses. It was my understanding that this reserve was actually cash or set aside and earmarked for the purpose of paying death losses and loan settlements; that it was in cash and security. Liabilities are what you owe and assets are what

(Testimony of George H. Cornes.)

you have to offset that with. The item "reserve for policies" is carried in the liability column. That would mean to me that it is the amount of money and securities that the company would have to carry in its books for any loss that would have to be paid by the company not necessarily due at that time. The first mortgages on real estate are an asset. Accounts payable is a liability. I understood the [628] reserve was the ultimate value and amount set up to pay on the policies. I believe our percentage of the Bankhead death loss was \$2500 if the reinsurance was in force. Mr. Marquis had an agreement that Mrs. Bankhead would be paid off at \$100.00 a month. I knew a settlement had been made with Mrs. Bosch. I don't know how much she was to be paid a month. I think the full amount of her investment was to be repaid. I don't know why it was made on the installment plan. I had nothing to do with it. I think I sold Mrs. Bonar a bond after I traded the stock for the land. I think she bought a total of three bonds. I sold her all she had. I was present and took part in the sale to Mr. Palmer. I don't recall whether I answered that I had made the statements or that those statements were made. I was there at the time they were made. I don't recall making the statement that the stock sold Palmer was some stock that had been surrendered by a rancher near Seligman or Kingman. It could have been made and been correct. I don't know

(Testimony of George H. Cornes.)

whether the stock was issued to Palmer out of any other certificate or not. We resold stock for people who were unable to pay for it. I don't know this man at Kingman who surrendered the stock. I don't know whether his name appears in the books. That information would be given to us by Mr. Marquis that a certain block of stock had been turned back. In some instances that was used as a sales talk. Prospective purchasers were not led to believe that the stock was difficult to get except where somebody had turned it back. I sold Mr. Haymes fifty shares in 1937. If the stock had been originally sold at \$10.00 a share and was turned back, it would be sold at \$10.00 a share when they resold it. I think you will find a great deal was sold at \$25.00 a share. A great deal was sold at \$20.00 a share. I don't recall the conversation I had with Mr. Haymes about where that stock came from. I did not take half of the fifty shares. It was sold to [629] somebody else. To the best of my knowledge and belief it was the stock that had been turned back by somebody at Bisbee. There was no way I could determine unless I could look through the records. I don't think anybody who turned stock back ever had a certificate issued. It wouldn't be issued until the stock was paid for in full. When he failed to pay for it it was cancelled, the note was given back and he would have credit for the amount of stock he had paid for. It all came out of the allocated stock. I agreed I would take the Haymes stock if

(Testimony of George H. Cornes.)

he wasn't satisfied on January 1, 1938 and I did so. Mr. Haymes told me at the time he might need the money. He was building a home I think. I never said anything to him about a cash dividend on the first of January. I never told anyone there would be a cash dividend paid at any time. I told them a stock bonus would be paid but not cash. I took the stock back immediately after the company went broke. I gave him a note for \$250 due in two years. I don't recall the exact month we decided about the stock bonus some time in 1937. That was to go to everybody who had stock in the State Securities Corporation. It was in the summer. That was to come out of the holdings of myself, Marquis and Mr. Hamilton. Certificates had not been issued for the stock, merely allocated to us, and the dividend was to be paid when the stock was issued. I believe Mr. Marquis said at the time that when we got ready to make that five per cent bonus I would get sufficient of the stock issued to pay that bonus. I only saw the certificate issued to Marquis, Cornes, Marquis and Hamilton here in the court room. None of the bonus stock was ever issued to stockholders and purchasers. They were told it would be issued some time in February, 1938. I don't know whether certificate 912 for 23,315 shares, being Exhibit 19 issued to Marquis, Cornes, Marquis and Hamilton was issued for the purpose of making available the stock with which [630] to pay the stock bonus. I don't know what steps if any were taken to pay

(Testimony of George H. Cornes.)

that bonus. Before the bonus could be paid the companies failed. I think most of the checks shown to me by Mr. Wilson were charged to me. Check 3694, \$171.95, dated September 24, 1936 was in part charged to me. It was not properly charged. It was paid to the Country Club by Mr. Harry S. Marquis. I paid dues and monthly bills at the Country Club. If I had received any proceeds of the checks, I would have signed a cash receipt for them. When I drew money I put in a cash receipt for it. We didn't find any of them. I have some at home, duplicates. I don't know how that was handled in the books. Mr. Marquis would dictate how it was to be charged, but so far as I was concerned, I would sign a cash receipt for having drawn certain amounts of money. [631]

I was unable to find the receipts I gave. We didn't have time to go through the Corporation Commission records. I don't know whether I got \$35.00 shown by duplicate check voucher, November 4, for expenses to Douglas. I wouldn't know unless I saw the check. If it had my endorsement on it I probably got it. I have no recollection of the trips I made in the month of November. These checks for traveling expenses were probably paid to me, because I was going out on a reinsurance or something in connection with the company. There is a total of \$190.00 for the month of November, 1936. I do not have any recollection of the check for \$325.00, November 23, 1936. I probably drew

(Testimony of George H. Cornes.)

it and it was charged to me personally for commission account. The checks I testified to were charged to me personally in Mr. Hair's report. We didn't check the traveling expense at all to see whether all of those were made payable to me or withdrawn by me or not. There might be some of those charged the same way as the others. Mr. Bankhead died, I think, on the 27th day of December, 1937. We had sufficient assets to pay the loss, but not cash on hands. I did not examine the books at that time to determine if there was cash on hands to pay it. I couldn't tell anything about the books. I suppose the bank balance would have shown the cash and I think the bank balance would show we did not have enough cash on hand at the time to pay it. I asked Mrs. Hill whether we had money enough. I called Mr. Marquis on the phone and told him to come down. That was his work. I was much concerned with the situation. I didn't like the idea of the Lincoln National contract being cancelled. I took steps to have it reinstated. I knew we had plenty of mortgages if it came down to where we had to pay that. We could dispose of mortgages of the company which would be capital and surplus, and according to the statement, I believe we had around \$20,000 surplus at that time. Mrs. Hill [632] said we had mortgages on hands. That included all of the mortgages. I don't know whether they were past due or not. I told prospective purchasers of stock

(Testimony of George H. Cornes.)

that those salaries were being paid to the officers of the company. I never examined the books to know what the officers were drawing. I never examined the books to know how much R. F. Marquis was drawing for running the business. I didn't know until I saw from Mr. Hair's statement how much he was drawing. I always figured I drew a great deal more than he did and a great deal more than Mr. Harry Marquis, and a great deal more than both together, because I brought in some business. Mr. R. F. Marquis sold some stock and some insurance. Most of his time was taken up in the office. I didn't make any effort to determine what compensation he was getting. I do not know how much I actually drew independent of traveling expense for any money here. I couldn't give you an approximate amount. I didn't make any examination of the books to determine how much I had drawn. Mr. Canning made out my income tax. He would make out the report and Mr. Cornes and myself would sign it. Whatever I owed, Mr. Canning would either draw it from the company, have it charged to me, or I would give him a check for it. Usually I would sign the blank and take it home to Mrs. Cornes and Mrs. Cornes would sign it. Mr. Canning kept the books of the company and was familiar with the amount I withdrew, and I supposed he would be the one that would know. If there was any tax I would pay it. Sometimes I think possibly I would give him a check for



(Testimony of George H. Cornes.)

the amount. I never paid enough attention to know what the approximate amount was in a given year.

### Redirect Examination

Mr. Wilson

The Witness: I never made any charge for commissions on stock that was exchanged for bonds. I took care of a considerable amount of renewal insurance. I didn't collect any [633] commissions or charge any commission for that work. The commissions paid me were based exclusively on the sale of stocks and bonds and life insurance. The commissions didn't include all traveling expenses. Mr. Marquis said we would be allowed some traveling expense which would be charged to the expense of collecting renewal premiums. There was no commission on that and there was no commission on the exchange of bonds. I spent a good deal of time on that. I estimate my traveling expenses would run around \$60.00 per week. I think during the time I worked, I have traveled in excess of 400,000 miles, and I think a conservative estimate would be \$25,000. Aside from the expenses allowed me on renewal insurance and the exchange of stock for bonds, I paid all the expense out of my commissions, including the cost of the automobiles that I purchased. I gave mortgages to the company on the Yuma property which I held as trustee. They were still in existence at the time of the dissolution of the companies and totalled something

(Testimony of George H. Cornes.)

over \$40,000. I didn't pay any actual money for my interest in the Yuma property. I was the agent who made the sale and charged no commission for that exchange of stock and have been paid no commission on it. My understanding was that I was to be paid a commission when the land was sold by the other members and not by the company. I sold stock subsequent to January 1, 1938. The reinsurance contract had been reinstated when I sold the stock. I attended all the stockholders' and directors' meetings of the company. There was a stockholders' meeting on January 14, 1936, the day check marked Government's Exhibit 27C, was issued. I attended that meeting.

### Recross Examination

Mr. Whitney

The custom of the company was that if the stock had been sold and could not be paid for, it was resold. Stock was never [634] issued until it was fully paid for. Defendants' Exhibit E for identification is the form that was used by me and other salesmen in selling the State Securities stock. Whereupon, Defendants' Exhibit E for identification was, without objection, received in evidence and marked Defendants' Exhibit E in evidence, which abstracted to the issue is: [635]

Testimony of George H. Cornes.)

DEFENDANTS' EXHIBIT NO. E

REQUEST FOR TRANSFER OF SHARES  
STATE SECURITIES

CORPORATION

Phoenix, Arizona

Dated....., 193.....

I, ....., do hereby designate, authorize and direct.....

....., my representative, to procure from legal owner the transfer to me of .....

shares of the capital stock of State Securities Corporation, of Phoenix, Arizona, and I agree to pay therefor a total sum of \$....., in the following manner, to-wit:

The sum of \$.....is paid concurrently herewith, and the sum of \$.....I agree to pay on or before.....

It is understood and agreed that the shares to be transferred hereunder were duly subscribed and/or issues under authorization of the Arizona Corporation Commission. No statement, representation or agreement shall be binding upon any party hereto unless said statement, representations or agreement be written into the body of this Request for Transfer prior to the signing thereof.

It is understood and agreed that no interest of Title in or to any of the shares herein requested to be transferred shall accrue to me until the total purchase price has been paid all

(Testimony of George H. Cornes.)

as above set forth, and upon my failure to complete payments as above set forth for any monies paid on account hereof may at the option of the owner of the shares purchased be declared forfeited as liquidated damages and return to me any past due note or other unpaid evidence of indebtedness shall ipso facto be deemed a full and complete return or settlement and termination of this contract. This agreement shall not be binding on either party until accepted by State Securities Corporation.

I have read the foregoing instrument and understood its terms.

.....  
Subscriber.

Witness:

.....  
Request for Transfer accepted by State Securities Corporation this.....day of.....  
....., 193.....

.....  
Dated at....., this  
.....day of....., 193.....

Received of.....  
the sum of \$.....on account of his request of even date herewith for transfer to him of.....shares of the capital stock

(Testimony of George H. Cornes.)

of State Securities [636] Corporation, heretofore personally subscribed and/or issued by said corporation under permit issued by Arizona Corporation Commission.

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Subscriber's representative.

[637]

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MARIE ROHDER

was called as a witness on behalf of the defendants, and, being first duly sworn, testified as follows:

Direct Examination

The Witness: My name is Marie Rohder. I am employed by the State Tax Commission. At one time I worked for the Union Reserve Life Insurance Company. It was the latter part of 1933 and the first part of 1934, from July to March. I worked under the direction of Mrs. Conway and Mrs. Hill. That is my endorsement on Defendants' Exhibit V in evidence. I didn't give any portion of the check to George H. Cornes. I can't remember cashing it. I remember endorsing the check. I imagine I gave the check to Mrs. Hill.

Cross Examination

The Witness: I remember endorsing the check, and they said at the time what it was for, but I don't remember. I don't remember going out and

(Testimony of Marie Rohder.)

getting the cash. I remember endorsing it. The check is payable in cash. I don't know why I was asked to endorse it. I didn't get any of the proceeds. I don't know what was done with the cash.

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### EDGAR G. HAMILTON

was called as a witness in his own behalf, and being first duly sworn, testified as follows:

#### Direct Examination

The Witness: I am Edgar G. Hamilton, one of the defendants, 52 years old and have a family. From the time I commenced to earn my living I was first in the rice business in Texas, then I helped to colonize the King Ranch in Texas. Then I was with the Bankers Joint Stock Land Bank in Missouri. Then I engaged in the insurance business and have been in that business off and on since 1920. I came to Phoenix in August, 1935. I know R. F. Marquis, but was not acquainted with him prior to the time I came here. I had some correspondence with him. My daughter's health [638] caused me to come to Arizona. I contacted Mr. Marquis by letter because he was connected with an insurance company. I had determined that from the Best and Company reports. I had not heard of Mr. Marquis prior to that time. I investigated the Union Reserve Life Insurance Company before I came, through Best's Reports, the 1934 edition.

(Testimony of Edgar G. Hamilton.)

I think I arrived here the 12th of August, 1935. I met Mr. Marquis the following day in his office in the Luhrs Tower. I had a discussion with him and was finally employed to sell life insurance. We discussed the life insurance generally and my going to work for the company. We discussed the financial condition of the company. I told Mr. Marquis I wanted to become connected with some home company, because I wanted to stay here in the West, and a better opportunity would be afforded if I could help develop the company and stay with it. Mr. Marquis liked the idea. He gave me some documents concerning the company. Defendants' Exhibit H for identification and defendants' Exhibit AJ for identification are the documents. Thereupon, defendants' Exhibit H for identification and defendants' Exhibit AJ for identification were offered and received in evidence, without objection, and marked Defendants' Exhibit H in evidence and Exhibit AJ in evidence, which abstracted to the issue are:

#### DEFENDANTS' EXHIBIT NO. H.

Being a letter addressed to Bert C. Pierce, Phoenix, Arizona, written on stationery of Arizona Corporation Commission, dated June 3, 1933, stating that Union Reserve Life Insurance Company is incorporated as a domestic insurance company with home office in Ellis Building, Phoenix. That the company was in

(Testimony of Edgar G. Hamilton.)

good standing with the department with admitted assets of \$150,758.92, the total liabilities exclusive of capital stock are \$22,656.79. The ratio of assets to liabilities was \$6.65 of assets for each \$1.00 of liabilities. The capital stock is [639] not included in the above liabilities for comparison. Signed by J. Elmer Johnson, Examiner, Arizona Corporation Commission.

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#### DEFENDANTS' EXHIBIT NO. AJ

Consists of copy of a letter written on Arizona Corporation Commission stationery, dated August 14, 1933, directed to Lafe S. Hatch, Holbrook, Arizona, signed George A. Brown, Secretary, relating to Union Reserve Life Insurance Company. Letter on stationery of Western Union Life Insurance Company, Spokane, Washington, dated April 11, 1912, signed H. C. Sampson, address to R. F. Marquis, recommending him. Copy of a letter of recommendation, R. F. Marquis, signed by a number of people. Letter on the stationery of the Department of Insurance, North Dakota, dated May 3, 1930, to R. F. Marquis, signed by S. A. Olsness, Commissioner of Insurance. Copy of a letter of October 17, 1934, on stationery of State of Utah, signed by A. Ezra Gull, Director, authorizing sale of States Securities Cor-



(Testimony of Edgar G. Hamilton.)

poration stock in Utah. Printed statement of amount of life insurance written and issued in Arizona in 1933 by different companies.

The Witness: Mr. Marquis handed me some other documents at the same time. Thereupon, the document, without objection, was received as Defendants' Exhibit No. AX in evidence, which abstracted to the issue is:

DEFENDANTS' EXHIBIT NO. AX

A folder issued by Union Reserve Life Insurance Company, showing pictures of officers and directors.

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The Witness: The purpose of Best's Insurance Reports is for the benefit of the insurance fraternity. The insurance people generally rely on Best's Insurance Reports for information as to various companies in the United States. Thereupon, defendants' Exhibit F for identification was offered and received in evidence, and marked Defendants' Exhibit F, in evidence, which [640] abstracted to the issue is:

DEFENDANTS' EXHIBIT NO. F

Being a copy of a book published and known as Best's Insurance Reports, containing state-

(Testimony of Edgar G. Hamilton.)

ments of the various insurance companies in the United States.

The Witness: I relied upon Defendants' Exhibit H and Exhibit AJ in evidence when I went to work for the company. I also relied upon the information that the company had been licensed each year through the Insurance Department of the Corporation Commission prior to the time I went to work. I didn't sell any insurance. I started selling stock for the State Securities Corporation two days after I went to the office. I had a conversation with Mr. Marquis concerning the sale of stock the third day I was there in his office in Luhrs Tower. No one was present except Mr. Marquis and myself. He told me there had been some stock sold and that the buyers were unable to pay for it and he wanted me to resell the stock, and that there was some stock owned by Marquis, Cornes and Marquis which he asked me to sell. I went over the thing with him and I asked him where the money was going from the sale of the stock. He said it was going into the surplus to help build the life insurance company. Then I started selling stock. I usually left the office on Monday morning and got back Friday night or Saturday morning. Sometimes I would not go to the office Monday morning. I was there every Saturday morning. Sometimes I didn't come into the office. My business in the office was to turn over the money I had collected during the week. I turned it

(Testimony of Edgar G. Hamilton.)

all into the company and the company paid me back the commissions. I was to get 25%. I didn't have any talk with Mr. Cornes or Mr. H. S. Marquis about it. I didn't know Mr. Canning at all. I first learned that the companies were in financial difficulty the latter part of 1937. I don't know as it would be a [641] financial difficulty. I discussed with Mr. Cornes something about the reinsurance contract. I remember when the officers of the Republic National Life Insurance Company came in. It was the latter part of February, 1938. The purpose was to effect a consolidation of the companies. That was shortly before the company folded up. That was the first time I knew the company was in difficulty aside from the reinsurance contract. I think I was in the office on the 28th day of December, 1937. I came to the office one morning and Mrs. Hill told me the reinsurance contract with Lincoln National had been cancelled. About an hour after this, Mr. Cornes came in. He, Mrs. Hill and myself had some conversation about the reinsurance contract. The contract had been cancelled with the Lincoln National. I suggested to Mr. Cornes that he had better get hold of Mr. Marquis to fix up the reinsurance contract. I afterwards learned that the contract had been reinstated. I heard about the Bankhead loss about that time. The Best Reports indicated the company could pay the loss very easily. I remember going to see Gerald Palmer with Mr. Cornes. I think in the spring or early part

(Testimony of Edgar G. Hamilton.)

of 1937. It was the deal that Mr. Cornes discussed. I talked to Mr. Palmer about the sale. I told him what I had believed and what I thought of life insurance generally and that life insurance companies were among the safest institutions in America and their stock was considered the safest in the United States. I think I did most of the talking. As a result of that visit we sold Mr. Palmer some stock. Both Mr. Cornes and myself talked to him. I didn't say anything to him about stock being sold for \$50.00 per share. I don't think Mr. Cornes did. I didn't hear him. We were together all of the time. I don't recall anything else that was said. We were trying to sell Mr. Palmer some stock. I remember calling on Mr. Taylor in Florence. I was going down to Florence on a trip and [642] Mr. Marquis asked me if I would call on a man by the name of Taylor that had written him for a loan. I asked Mr. Taylor when he would want the loan. He told me he was building a house and would like to have it as soon as possible. I told him I would transmit the information to Mr. Marquis and I did so. I don't think I ever saw Mr. Taylor again. I didn't write him. I didn't make a special trip to Florence to see him. I went to Florence to sell some stock in the company and called on Mr. Taylor because Mr. Marquis asked me to. I don't remember that I tried to sell Mr. Taylor any stock. I think Mr. Taylor was trying to borrow the money on a bond that he owned. I never sold any bonds

(Testimony of Edgar G. Hamilton.)

for the company. I never exchanged any stock for bonds. I don't remember I was ever with anybody who did. The bond transactions had been closed before I got into the business. I think I was with the company two or three months before I heard of the bonds. I heard them being discussed in the office. I knew the company had been organized on the bond plan. I heard Mr. Grant testify about the trip that Mr. Marquis and myself made to his home. We made the trip. I was going to Yuma and Mr. Marquis asked me if he could go along to look over the grapefruit grove while I was there on my business. My business was to sell stock. I can't remember the date. I think the late part of 1937 before Christmas. I think the first time I saw Government's Exhibit 36 was when you wrote me about it or called me up. I didn't see Mr. Marquis hand it to Mr. Grant on the Yuma-Mesa. I was not in the house with Mr. Marquis and Mr. Grant all the time. I walked around and admired Mr. Grant's new home. That is not my signature on Government's Exhibit 36. I never authorized anyone to place my signature on the document. I may have seen the statement, but I did not pass it out among stockholders or mail it out. I had nothing to do with the preparation of it. I remember the transaction [643] in Casa Grande with Mr. Guy Baker. It was September 17, 1936. I made out the note. It was signed by Mr. Baker. I didn't write across the face

(Testimony of Edgar G. Hamilton.)

of it. I sold some stock to Mr. Baker. No one was present but he and myself. I attempted to show Mr. Baker that stock in the company was all right. I complimented him on having a policy with the company. I didn't misrepresent anything to Mr. Baker. I called on him voluntarily. I got his name from the office. It was the general practice to attempt to sell policyholders stock in the company. I discussed it in the office with R. F. Marquis. He thought it was a good idea to sell stock to policyholders. He said the policyholders had confidence in the company and they should be permitted to own a part of the stock. I remember a conversation with Mr. and Mrs. Etz in September, 1937, at Yarnell. I had seen Mrs. Etz in the Company's office before I went up there. [644]

When I went to Yarnell Hill to see the Etz family, I think Mrs. Etz, her husband and myself were present. I went up to sell them some stock. I heard they already owned some. I endeavored to explain to Mr. and Mrs. Etz the life insurance business and tried to sell them some stock and I did. I sold her fifty shares. She gave me some stock she already had. She wanted it transferred and put in one certificate with the stock she already had. She wanted it in her name and her husbands. I brought the stock in with a deed to some property she wanted to mortgage. I don't remember bringing any Central Arizona Light and Power Company stock. She told me at that time she owned some

(Testimony of Edgar G. Hamilton.)

power stock. I came down with the deed to get the mortgage and Mr. Marquis told me he could not accept it, I took it back a few days afterwards. She and her husband were there. We discussed the matter and she decided to turn in her light and power stock on a \$1,000.00 of stock she was to purchase. As I remember she gave me the power company's stock that day. I brought it in to Mr. Marquis. I didn't go back any more. I don't know who went back. Both Mr. and Mrs. Etz talked when I was there about the Light and Power Company stock. There was a general discussion as to public utilities stocks. I told them the Government was handling public utilities companies and that I had been told that Arizona would get power in a short time from Boulder Dam. I believed that to be true. There was a discussion of dividends and I am sure I told them that the company would pay a stock bonus of 5% after the first of the year. I got that information from Mr. R. F. Marquis, and Mr. Cornes. I told them the bonus would come out of stock from Mr. Marquis and Mr. Cornes. I did not tell either Mr. or Mrs. Etz at any time that the company was going to pay a cash dividend. I think Mrs. Etz called at my home in Phoenix before Christmas, 1937. That was on political matters. Nothing was said about stock. In the conversation with [645] Mr. Gerald Palmer, I think there was something said about where the stock came from that we were trying to sell him. I remember telling

(Testimony of Edgar G. Hamilton.)

him that Mr. Marquis had told me that someone in the state had purchased some stock and it was being released to be resold. I don't remember that he told me who the person was. Possibly a stock bonus was mentioned to Mr. Palmer. Nothing was said about a dividend. I didn't tell Palmer that a 5% or any other dividend in cash would be paid on the first of the year. I don't think dividends was discussed with Mr. Baker at Casa Grande. I never told Mr. Baker or any other person that we were going to pay a cash dividend. I may have told Mrs. Etz and Palmer that we were going to pay a stock bonus after the first of the year. I contemplated leaving the company around the latter part of 1936 and I was induced by Mr. Marquis to remain. I was never a stockholder in the State Securities Corporation nor an officer or director or on the executive committee of that company. I was present at meetings of the State Securities Corporation. I remember two. One of them was when Mr. Miller was here. I don't know whether it was an executive or directors meeting. Mr. Fields and I were called in to a State Securities Corporation meeting one time to count some proxies. I don't remember who called me in. I didn't stay for the entire meeting. I don't remember any other State Securities meeting. I didn't vote, I was not a stockholder. The first I learned that I appeared in the minutes of



(Testimony of Edgar G. Hamilton.)

State Securities Corporation as *an* member of the Board of Directors, a stockholder and a member of the executive committee was when I saw the Bill of Particulars. I remember being elected Vice-President of the Union Reserve Life Insurance Company in the early part of 1937. I don't remember that I was elected to the Board of Directors of the Union Reserve. I didn't attend a meeting of stockholders of Union Reserve, January 14, 1936. I never told anybody I was elected as a [646] member of the Board of Directors or on the Executive Committee. I was not present when I was elected vice-president. I have never seen the minute books until in the courtroom here. I don't know anything about what is in them. When I started to sell stock I asked Mr. Marquis if we were permitted to sell the stock. He told me that the stock had been sold to other parties and that a permit was not necessary. He told me about the allocated stock. I called on the Etzs' in December, 1937. I remember giving the card with my name and telephone number. I think that was in December. They called me up when they came to town. I was not in a partnership known as Marquis, Cornes, Marquis and Hamilton. I first heard of stock certificate No. 912 for 23,315 shares when I received a letter from Mr. Whitney. I never have seen the certificate. I didn't know it was going to be issued. I never represented to any stockholder or prospective purchaser or purchaser of stock in

(Testimony of Edgar G. Hamilton.)

State Securities Corporation that a bonus of stock was going to be given out of any stock that I owned. I understood when I was selling the stock that the money from the sale was to go to build up the life insurance company. I never represented to anyone prior to the first part of March, 1937, that I was an officer or director of Union Reserve or State Securities Corporation. I never had any understanding with R. F. Marquis, H. S. Marquis, or George Cornes, or Mr. Canning, that we or any of us would devise a scheme to defraud. I never engendered in my own mind a scheme to defraud from the sale of the State Securities Corporation stock. I never did conspire with any of the other defendants or with all of them or with anybody else to use the mails to defraud anyone. I had nothing to do with the mailing of the letters and knew nothing about them. I had nothing to do with the management of the State Securities Corporation, or of the Union Reserve Life Insurance Company. I had nothing to do with [647] the bookkeeping of either company nor did I ever direct the employees of either company to make any entries in any of the books. I don't know anything about the books. I don't know how much money I drew from the two companies during the time I worked there. I had nothing to do with the formation of the corporation in 1929. I had never heard of the corporation nor any of the other defendants. I didn't have anything to do with securing 50,000 shares of stock for the

(Testimony of Edgar G. Hamilton.)

incorporators from State Securities Corporation. I heard of the allocation of that stock after I went to work. I had nothing to do with securing the life insurance company. I told people to whom I sold stock that the company was licensed by the state to do business and I thought it must have been good stock. I wouldn't have sold anybody stock if I had known the company was not in good financial standing. I never made a personal investigation at any time as to the assets and liabilities of the company. I had nothing to do with the preparation of the combined balance sheet of State Securities Corporation and Union Reserve Life Insurance Company as of June 30, 1937. I had nothing to do with mailing or causing to be mailed to stockholders of the corporation and others, a letter dated November 26, 1937, and including in said letter a copy of the combined balance sheet of June 30, 1937. I had nothing to do with preparing or causing to be prepared the annual statement of the insurance company covering the year ending December 31, 1936. I didn't have anything to do with filing with the Arizona Corporation Commission the 1936 annual statement of the insurance company which is part of Government's Exhibit 7. I had nothing to do with mailing or causing to be mailed or with preparing the financial statement of the Union Reserve Life Insurance Company of December 31, 1936. I didn't draw any salary from either of the companies while I worked there. I

(Testimony of Edgar G. Hamilton.)

paid my own traveling expenses. I occasionally took a trip with one of the [648] officers of the company where the officer paid the expenses or a part of them. I travelled about the state in an automobile. I was never a stockholder in the Union Reserve Life Insurance Company. I do not remember when Government's Exhibit 32, a form letter dated June 22, 1937, enclosing the annual report of the life insurance company of December 31, 1936, was printed and gotten out. It must have been published after the first or middle of March, 1937. The sale prices of the stock was \$25.00. I sold some stock at \$20.00. I think I sold around \$100,000 worth of stock. I didn't keep track of that. The checks I received for stock were made payable to State Securities Corporation, except I think in two instances they were made payable to Union Reserve. I brought all of the checks into the office. I had a drawing account against my commissions. I don't remember whether I drew any money where commissions had not been earned. The money I drew was charged against my commissions. I asked for a statement of my standing with the company but I didn't get it. At the end of the year I got information from the auditor, Mr. Canning. I didn't question the figures for 1935, 1937, 1938, about my commissions. He told me I earned around \$7,429.23 for the year 1936. I have no way of accounting for the Government's figures of \$11,878.83 for that year. I think I may

(Testimony of Edgar G. Hamilton.)

possibly have written letters to prospective stockholders or stockholders of the State Securities Corporation or Union Reserve. I don't have any copies of the letters and they were written in good faith. I don't remember who I wrote them to. I may have written some as vice-president. I don't think I made any representations as to the standing or condition of either company. If I did I believed it to be true. On December 28, 1937, when I had the discussion with Mrs. Hill and Mr. Cornes about the cancellation of the reinsurance I don't think my face was near as long then as it is now. My relations with [649] R. F. Marquis were very cordial. I carried a policy with the insurance company. I think it is still in force. I took it out before April 20, 1936. I paid the premium for the year 1937 and 1938. I believed while I was paying premiums on the policy that the Union Reserve was in good financial condition.

The policy was thereupon offered in evidence and received without objection as Defendants' Exhibit No. AY in evidence, which abstracted to the issue is:

**DEFENDANTS' EXHIBIT NO. AY**

Being a copy of a life insurance policy issued by Union Reserve Life Insurance Company to Edgar G. Hamilton for \$10,000.00, dated January 16, 1936.

(Testimony of Edgar G. Hamilton.)

Cross Examination

By Mr. Flynn

The Witness: I have been in the insurance business off and on since 1920. Most of the time selling. I never worked in an insurance company office. I was with the United States National Life, The National Savings Life, Rio Grande National Life, Great Western Life and the company I am with today. I know the selling of insurance in a general way. I have used Best's Reports with the other companies when I was selling insurance. I think about 300 companies are reported in Best's Reports. I understood they got their information from the sworn statement of the finances of the company. They do not make individual audits of the companies themselves. I don't remember whether the Illinois Life Insurance Company had a report in Best's Reports or not. [650]

Q. Did you ever hear of the Illinois Life Insurance Company?

A. I have heard of it, yes sir.

Q. Do you remember when it closed up and went out of business?

A. I think, Mr. Flynn, about, if I am not mistaken, twelve years ago, something like that. I do not remember the exact date.

Q. And that also had report in Best's Insurance Report did it?

A. It probably had. I don't remember whether it did, but it probably did.

(Testimony of Edgar G. Hamilton.)

Q. Didn't you know that it had a very satisfactory recommendation and report just shortly before the company closed up?

Mr. Carson: I object to that your Honor as irrelevant, incompetent and immaterial, having no purpose in this case.

The Court: Objection overruled.

Mr. Carson: Exception.

The Court: Go ahead.

Mr. Flynn: Just a few months before it closed up, did you know that?

The Witness: No I did not. I had no occasion to investigate. I know other companies which have been reported and which failed. I went to work for Union Reserve in August, 1935. I didn't sell any insurance. I had sold a little stock before, and I started as a stock salesman and asked Mr. Marquis if it was necessary for me to get a permit and he told me no. He said this stock had been authorized by the Corporation Commission and was merely a transfer of stock from one person to another; that they had authority from the Commission to issue the stock. I never saw any permit granted by the Corporation Commission for the sale of any securities of the State Securities Corporation. [651] I was never told it was necessary under the rules and regulations of the Corporation Commission and law to show each purchaser of securities a copy of the permit. I never saw any application of the

(Testimony of Edgar G. Hamilton.)

State Securities Corporation which had a copy of the permit attached to it or printed on it. The application I handled had no copy. I never saw one. I never showed one to any stock purchaser. I was told that the State Securities Corporation owned the stock of the Union Reserve and the profits would come from the Union Reserve. I depended upon the reports I had from Best's and the fact that the Corporation Commission had issued the life insurance company a permit to do business each year. I was told when I started selling stock that the State Securities Corporation owned an insurance company. It had been functioning three or four years before I came here. I found they had paid no dividends on their stock at the time I arrived here. I had some idea of what a new insurance company has to do to make profits. I know it takes an average of six or seven years sometimes a little longer to pay dividends. I knew the dividends that would be paid on the State Securities would have to be paid out of earned profits. I first learned of the cancellation of the reinsurance about December 28, 1937. I understood from the time I went there that the Union Reserve carried the insurance with the Lincoln National. I was at the Etz home about September 16. That is the day I got the receipt for the hundred shares of stock. I went up there from Phoenix to see the Etz's. I think I was alone the second time. Mr. Marquis stopped in there to see them. I don't re-



(Testimony of Edgar G. Hamilton.)

member when. The first time I got a deed to the property and a certificate of stock for which I gave her the receipt. It was my understanding that if I could secure a mortgage on the property she was to buy stock in the State Securities. When I went back in a few days I took the deed back and told her the company couldn't handle the loan. On that trip I secured the [652] Central Arizona Light and Power stock, thirty-eight shares. It was my understanding I was to sell enough of it to buy fifty shares of the State Securities Corporation stock and return the balance. I was not with Mr. Marquis when the stock was taken back. Mrs. Etz talked something about educational insurance for the children. I explained the life insurance company and mentioned several companies that had been successful and paid their stockholders a return on their investment. I suppose she wanted the State Securities stock because she thought it was a good investment. I understood the power company stock was seven per cent preferred stock. I think I showed her why I thought the State Securities Company stock would be better. Nothing was said about the payment of dividends within any length of time on the State Securities Corporation stock. Nothing was said about the dividends that would be payable on the power company stock after the first of the year. I don't know whether she told me she was getting dividends of seven per cent

(Testimony of Edgar G. Hamilton.)

or she was to get seven per cent dividends. I think there was something said about what dividends we might pay in the future. I don't remember it being said about the next dividend payment on the power company stock and the possible first dividend on the State Securities Corporation stock. I discussed public utilities generally with her. I told her the future of public utilities might not be so good. Nothing was said about my connection with the State Securities. I was vice-president of the life insurance company. I told them Mr. Marquis controlled the State Securities. I didn't say I was in control. I think Mr. and Mrs. Etz told me they would like to have their father and mother own some stock. They told me they also had some power company stock. I don't remember when I first met Mr. Etz' father and mother, but I met them in their home at Benson. It was after September 16. I think I was at the Etz's at Yarnell about December 24. I think I made [653] arrangements to meet them here in Phoenix to take them to Tucson to get their power company stock about the 24th of December. I don't remember if they were there or not. Someone drove them to Phoenix to meet me and I recall a special effort was made to have the transfer made before January 1. I met Mr. and Mrs. Etz, Sr., and we drove to Tucson and got the power company stock, and I made a deal with them that they were to take State Securities Company stock. I don't remember whether it was at \$20.00

(Testimony of Edgar G. Hamilton.)

or \$25.00. They bought a thousand dollars worth as I remember. I don't remember whether it was before or after the conversation in the office about the reinsurance being cancelled. There was nothing about that conversation which changed my opinion about the condition of the company or the advisability of investigating the State Securities stock. I still thought it just as good as ever because of their statement. I made some inquiries as to why the reinsurance premium had not been paid. I asked Mr. Marquis. I think I talked to him before the first of the year. When I learned it had not been paid, Mr. Marquis was not in town. I think the stock I sold was stock that had been allotted and transferred. I don't think I told them it was stock somebody else had surrendered. I didn't tell them some estate was being settled up and that made it possible to get hold of the stock. I think I told Mr. Palmer in 1937 that it was somebody else's stock that had been surrendered but not paid for. I think Mr. Palmer bought twenty shares. I talked to him about the general insurance business and the other companies that were making money and paying dividends. Nothing was said about dividends being paid by the State Securities Corporation. I don't remember that he asked about dividends. I didn't tell him there would be any cash dividends. I think I maybe told him there would be a stock dividend or a stock bonus paid after the first of the year. I didn't tell him

(Testimony of Edgar G. Hamilton.)

the bonus stock would pay dividends. He was [654] interested in finding out when he might get some return on his investment. I don't remember that I said anything about when he would begin to get returns. The same is true about my conversation with Guy Baker. I said nothing about cash dividends being paid at any definite date. I don't know as I ever heard of this 50,000 shares allotted to me. I understood from Mr. Marquis that 30,000 shares had been allotted. It was not explained to me just how the 30,000 shares were going to be handled. I understood that was part of the stock I was selling. The other stock was stock that had been sold to people who could not pay for it. I may have seen Exhibit 36, the second page of it. I don't remember when it was or who showed it to me. I don't think I had any discussion with either Mr. Marquis or Mr. Cornes at any time in the fall of 1937 about the statement. Nobody told me that there were stockholders making inquiries about the company making loans on the stock. Mr. Marquis never told me they would have to do something to satisfy the stockholders. I don't remember whether I have seen this statement. I was selling stock in the State Securities Corporation and I was much interested in the financial condition of the Union Reserve. I don't remember having made any study of this or any discussion about it with anyone. I never got a statement of my standing with the company on commissions. I asked for two or

(Testimony of Edgar G. Hamilton.)

three and never got them. I just kept on selling stock. I asked why I could not get a statement and they told me they would get one for me within a short time. I still thought the company was all right according to the statement of the Union Reserve Life Insurance Company. I helped sell some insurance. I never told prospective purchasers of stock that I held a policy in the Union Reserve. I think I sold some stock after January 1, 1938. I didn't work for the company up to the time it closed. I quit when the people from the Republic National Life came over to effect the consolidation. [655] I lived in Phoenix at that time. I got my information from Mr. Canning as to what I earned those different years. He gave me no itemized statement showing what it was based on. After I left here I have had no transactions with Mr. Marquis. I didn't see him in Washington nor did I call him up. I never did see a balance sheet or statement of the State Securities Corporation.

#### Redirect Examination

Mr. Whitney:

The Witness: I learned when the Republic National Life came over to investigate the company that it was in bad shape. I learned it from the auditors and actuaries.

## HARRY S. MARQUIS

was called as a witness in his own behalf, and being first duly sworn, testified as follows:

The Witness: My name is H. S. Marquis. I am a defendant in this case. I am fifty years old. I was born in Stronsburg, Nebraska. I was educated in the country school, graduated from high school at West Plains, Missouri. Took one year post graduate course, then graduated from Southwestern College in Springfield, Missouri in 1913, graduated from Midland College in 1917. I attended the institution of musical art in New York City. After that I taught school in West Plains, Missouri for three terms, then I taught at Kemmerer, Wyoming for two terms. I taught in Heywood University and a half period in Purdue University. I went into life insurance business in January, 1919 following the war. I was in service and am a war veteran. I was employed by the Northern States Life. I came to Arizona December 20, 1929. The first information I had of State Securities was when I arrived. My brother who was here called me by phone in Denver. He told me he had a company started here that he thought it would be a mighty good plan, a good chance to build an insurance company and said that if I was interested in it he might be able to work out a way where I could be a part owner of the company and could [656] get an interest in the institution. He asked me if I could advance some money. That was around December 10. I

(Testimony of Harry S. Marquis.)

talked it over with my wife and decided to come down here so I cashed some Gladstone Hotel bonds in the amount of \$5,000 for which I realized \$4500. I bought a car, cleared up some incidental expenses and left there with about \$2600. I got here and gave my brother \$1500 at that time to put into the institution in whatever manner it was necessary. I think I kept \$1100 that I used in trying to help benefit the company. I was a salesman selling bonds. I went to work immediately for the company. The \$1100 I used was in selling bonds and helping to train men who would become future salesmen. I paid their expenses while I was training them. I worked at the sale or exchange of bonds up to the time I took over the insurance company. I put in some additional funds which I received from a renewal contract with Northern States Life Insurance Company. I discounted it and received \$2600. I put \$1000 of that into the institution, gave it to my brother for development. I used \$1100 in field expenses the same as I had done in previous years. After taking over the life insurance company, my duties were to look after the renewals of the company. I don't recall selling any bonds after that. I may have sold a few shares of stock. I devoted my entire time to insurance. I sold some, but my duties were looking after renewals and keeping the business on the books. My transaction with Mrs. Bosch was I believe in April, 1930. We had a

(Testimony of Harry S. Marquis.)

salesman by the name of Parsons who had contacted Mrs. Bosch and called the office to see about an appraisal of some building and loan certificates. My brother asked me if I would see about it. I made a trip there and met Mrs. Bosch. She turned to the building and loan situation and said she thought her certificates were interest bearing but she had not received any income and had written the company and was unable to get a satisfactory answer. That was the First [657] National at Phoenix. I told her I would check up the building and loan certificates before I could make any transaction relative to exchange for bonds. I called the building and loan and talked to Mr. Bruneau. I got no information so I came to Phoenix and investigated the building and loan and found that the values were as represented, but there were so many withdrawals we would have to wait our turn. She had two certificates, one was 2000 and the other was 1500. She exchanged those certificates for five bonds in the State Securities Corporation. It was an even trade. No cash at all was represented. I saw her later in the fall. I stopped at her home and she asked me to have lunch with her. She mentioned that Parsons had sold her a block of stock, I think \$250, \$100 cash and \$150 in a note. She said that times were getting harder and that she had been teaching a class of German pupils; that her pupils had fallen down and she didn't



(Testimony of Harry S. Marquis.)

see how she could meet the obligation. She asked me if I could do anything about it. I told her I had no official right to cancel out the subscription but I would see what could be done. Her subscription was cancelled out and her \$100 returned to her and her note. I didn't sell her the stock. That is the last time I saw her until the other day when she was here. I know nothing of the transaction of where she converted her bonds into stock. I never made any false and fraudulent representations or promises to W. H. Etz, and Helen G. Etz to the effect that a dividend on the stock had already been authorized to be paid. By that time distribution of the checks had been delayed by the Corporation Commission. I had never seen Mrs. Etz until she came in the court room. I had seen William Etz once outside of the court room. In either the latter part of January or right after the first of February, 1938, Mr. Etz came into my office just as I was ready to leave to go out on the business of renewals and when he came in he said "It looks like you were going some place" and I said "Yes sir my duties keep me out of the office [658] most of the time." Then he stated he didn't want to bother me. He was on his way down south-east some place and stopped in to see my brother. I think he introduced himself. I didn't say that he was a stockholder of that his father and mother were stockholders. Nothing was said about stocks

(Testimony of Harry S. Marquis.)

or bonds or any other conversation relative to the affairs of the company. I sold Mr. Simmons some bonds. I think I sold him one. I may have sold him one or two later on. I didn't make any false representations of any kind to Mr. Simmons relative to the purchase of those bonds. I never talked to Mr. Baker at Casa Grande about any stocks or bonds. Some weeks I would not be in the office at all. Other weeks I would be in and out of the office, depending where I was working. I usually left Phoenix Tuesday morning. I don't see how it was possible that I could withdraw \$51,000 in that length of time. Mr. Hair charged travelling expenses to me of \$1947.93. That added to \$51,940.28 makes a total of \$53,888.21, a monthly average of \$540.85 per month. I drove between thirty and thirty-five thousand miles each year. In 1937 the mileage ran over 40,000. A reasonable charge per mile is five cents. The mileage at that rate for eight years would amount to \$12,000. My expenses while out on the territory would be around \$75.00 a month or a total of \$7350.00 for the eight years. I have contributed in cash to the company \$5300.00. Deducting those items it shows a payment to me of \$297.00 per month. Around \$300.00 a month would be the average I drew covering the entire period of time. After taking the renewals, the understanding was that I was to have living expenses and travelling expenses charged against me

(Testimony of Harry S. Marquis.)

in a running account until such time as the life insurance company could pay a salary. All I was to get was living expenses regardless of what my commissions might amount to. I do not know what the checks for which I was charged one third were used for. I did not receive the amount of money [659] that has been charged against me here. I never wrote any of the letters that were introduced in evidence and didn't know anything about them. I didn't know the contents at the time they were written. I never presided at any meeting of the executive committee. I didn't attend all the stockholders and directors' meetings. I had no knowledge of Dunne's Reports or of the books and records. I never made any entries in any of them for either of the companies. I had nothing to do with the compiling of the statements, Government's Exhibit No. 7. Three of the statements have my signature. I first learned of the cancellation of the Lincoln Life reinsurance the latter part of December or the first of January. I live now at Kemmerer, Wyoming. My wife and baby are there now at the home of my brother-in-law. I am employed by the Lincoln Liberty of Lincoln, Nebraska. I had nothing to do with the mailing of the letters set out in the indictment or compiling or dictating the letters. I have never at any time before or after I became associated with the State Securities Company and the Union Reserve Life Insurance

(Testimony of Harry S. Marquis.)

Company entered into any kind of a scheme or conspiracy of any kind or description whatsoever with anyone to defraud any other person. [660]

#### Cross Examination

Mr. Whitney:

The Witness: I had nothing to do with the keeping of the minutes of the Union Reserve Life or State Securities, and I did not attend any meetings of the Executive Committee of the Union Reserve. I never attended any executive committee meetings of the State Securities Corporation. I may or may not have attended the stockholders' meeting of the Union Reserve, January 14, 1936. I couldn't say who was there. I believe I was present at an adjourned meeting of the Board of Directors of the Union Reserve Life, March 29, 1937. I believe Mr. Hamilton was elected Vice President of the Union Reserve. I can't recall any meeting where he was elected a director of the company. I don't remember whether I was present at the stockholders' meeting, February 11, 1936. I think I was present at the stockholders' meeting Tuesday, February 9, 1937. I do not remember who counted the proxies. I know Mr. Hamilton was not a stockholder in State Securities. I don't recall any meeting when myself, my brother, Mr. Cornes and Mr. Hamilton met to discuss the payment of a stock bonus. I think my brother mentioned it to me sometime in the summer.

(Testimony of Harry S. Marquis.)

There wasn't any mention made of paying a bonus out of anyone's stock. I don't know who were stockholders.

Cross Examination

Mr. Wilson:

The Witness: I think the check, Defendants' Exhibit AD for identification was to pay my life insurance premium with the Occidental Life Insurance Company. Mr. Cornes had no interest in that.

Cross Examination

Mr. Flynn:

The Witness: To begin with, I was sales agent for Northern States Life and then I had charge of the annuity department. I started selling bonds of State Securities when I came to Arizona. I think I made out the application for the sale of [661] bonds to Mrs. Bosch. I was at her home. I quit selling bonds just before we took over the life insurance company. Then I took charge of the renewal department of the company. It was my work to see that the removal premiums were paid, and secure reinstatement of lapsed policies. I can't recall that I sold any stock in the State Securities after 1933. When I first went to work I was getting a commission the same as any other salesman. After the insurance company was started I was to receive just my living and traveling expenses until such time as the company could pay me a salary. There was no

(Testimony of Harry S. Marquis.)

express amount ever determined. I was trying to help and do all I could to build the institution so I kept my expenses just as low as possible. I don't know how the company kept track of them. I turned in an expense account. I drew money for expenses, sometimes in the check and sometimes cash. There was no definite amount. I estimated what it would take for the week's expenses. There was no accounting after 1933 of what I actually spent. The amount I drew each week was not varied much. Out of it I paid living expenses for myself and family. It was not a salary. The membership in the Club was assigned to the State Securities. It was its property. I was out there occasionally. I do not know what the charges were nor what fund paid for them. I attended the greater number of the sales meetings. I was an officer of both companies. Mr. R. F. Marquis was not at all meetings. Some of them he was and so was Mr. Cornes. The officers of the company were not always at the meetings. At the Saturday morning meetings, the business so far as the insurance work was concerned would be discussed. That was the main business of the company. We took up matters for the purpose of stimulating the business. I don't recall ever discussing dissatisfied stockholders at the meeting. That never came up. I think some of the commission on the sale to Mrs. Bosch was credited to me. [662] Also on the sale to Mr. Simmons. I endorsed a check for \$50.00 dated May 14, 1935. I don't know what the notation in the lower left hand

(Testimony of Harry S. Marquis.)

corner, "M-1/3, C-1/3, M-1/3" means, unless it would be for the benefit of the bookkeeper. I imagine it might be that R. F. Marquis, George Cornes and H. S. Marquis would each be charged with a third of it. I do not have any personal recollection of the check. I saw Mr. Etz sometime after the first of the year 1938, had a conversation with him.

Mr. Flynn: What was that about?

Mr. Whitney: If the Court pleases, after December 31, 1938, is that January 1?

Mr. Flynn: January 1.

Mr. Whitney: After January 1, 1938 would be outside of the bounds of the indictment I think. I object to it.

The Court: Well, the witness may answer the question.

Mr. Frazier: Exception.

The Witness: I didn't understand your question.

Mr. Flynn: What was the conversation about?

The Witness: Just casual topics. Mr. Etz came in and stated it looked like I was going someplace, and then he said he was on his way through and just stopped to see Mr. Marquis. I told him Mr. Marquis was out of town and we expected him back most any time. He said he would see him on his return to Phoenix. I didn't even know Mr. Etz was a stockholder at that time. He didn't say any-

(Testimony of Harry S. Marquis.)

thing about any dividends that would be paid and didn't ask what was holding it up. I didn't tell him a dividend would be paid, it was just held up temporarily. He left immediately. My wife was paid back some money, but not part of what I advanced at the beginning. The \$100.00 I spent in training men did not include any of my living expenses. I haven't itemized the amount. I supported myself and family from my commissions. [663] Thereupon, Defendants' Exhibit AH, the file in the grapefruit deal, was offered in evidence and, without objection was received as Defendants' Exhibit AH-1 in evidence, which abstracted to the issue is:

#### DEFENDANTS' EXHIBIT AH-1

Being a folder containing a warranty deed from R. F. Marquis, Trustee, R. F. Marquis and Kate H. Marquis, husband and wife, H. S. Marquis and Alexa Whitmire Marquis, husband and wife, L. Jo Hall and Helen Hall, husband and wife, and George H. Cornes and Joanne Cornes, husband and wife, to Roy B. Rummage, liquidating agent for the Arizona Corporation Commission in the affairs of Union Reserve Life Insurance Company, a corporation, conveying farm units N, P and the South half of Q, according to the farm unit plat in Section 6, Township 10 South, Range 23 West of the Gila and Salt River Base and Meridian, Maricopa County, Arizona. Realty mortgage covering the



(Testimony of Harry S. Marquis.)

same land from R. F. Marquis, trustee, to State Securities Corporation for \$17,500.00. Realty mortgage from R. F. Marquis, trustee, covering the same land to State Securities Corporation for \$21,500.00. Trust agreement between George H. Cornes, R. F. Marquis and Kate H. Marquis, H. S. Marquis and Alexa Whitmire Marquis, L. Jo Hall and Helen Hall, his wife, covering the North half of Farm Unit Q. Trust agreement between George H. Cornes, Joanne Cornes, R. F. Marquis, Kate H. Marquis, H. S. Marquis and Alexa Whitmire Marquis, covering Farm Unit M and N. Assignment of mortgage from Union Reserve Life Insurance Company to State Securities Corporation, securing note for \$17,500, satisfaction of mortgage executed by R. F. Marquis, trustee. Assignment of mortgage State Securities Corporation to Union Reserve Life Insurance Company, securing \$17,500.00. Promissory note executed by R. F. Marquis, trustee, to State Securities Corporation, September 7, 1936, for \$21,500, due 10 years after [664] date, and assignment of note and mortgage securing the same to Union Reserve Life Insurance Company. Copy of trust agreement covering farm Units N, P and South half of Q. Cancelled note for \$17,500.00, dated March 29, 1933, payable to State Securities Corporation, executed by R. F. Marquis, trustee. Appraisal of Farm Units N, P and Q,

(Testimony of Harry S. Marquis.)

by Daniel Grant, February 7, 1931, appraising the land at \$1,000.00 per acre and appraisal of the same land by J. H. Lepasky on the same date, appraised value \$1,200.00 per acre.

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### R. C. STANFORD

was called as a witness on behalf of the defendant, R. F. Marquis, and being first duly sworn, testified as follows:

#### Direct Examination

The Witness: My name is R. C. Stanford. I live in Phoenix and was formerly Governor of the state. I have lived here over 50 years and have known R. F. Marquis eight or nine years. I know the people in Phoenix with whom he has associated. I know his reputation prior to August 9, 1939, the date of the returning of this indictment, for truth and veracity, honesty and integrity and for being a law abiding citizen, made up by what the people generally said about him in the community in which he lives. That reputation was good.

#### Cross Examination

The Witness: I appointed Mr. Marquis on the Social Security Board in 1937 and at that time thought he was all right.

H. T. BAILEY

was called as a witness on behalf of the defendant, R. F. Marquis, and being first duly sworn, testified as follows:

Direct Examination

The Witness: My name is H. T. Bailey. I am a physician, live in Phoenix and have lived here since 1914, and I have known [665] Raymond F. Marquis eight or ten years. I know the reputation of R. F. Marquis prior to the returning of the indictment on August 9, 1939, for truth and veracity, honesty and integrity, and good citizenship, made up by what the people generally said about him. That reputation was good.

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L. C. HOLMES

was called as a witness on behalf of the defendant, R. F. Marquis, and being first duly sworn, testified as follows:

Direct Examination

The Witness: My name is L. C. Holmes. I live in Phoenix and have lived here most of the time since 1900. I am Chairman of the Industrial Commission of Arizona. I have known Raymond F. Marquis about ten years. I know his reputation prior to August 9, 1939 for truth and veracity, honesty and integrity and for being a law abiding citizen, made up by what the people generally said about him. That reputation was good.

## ERNEST P. MORRIS

was called as a witness on behalf of the defendant, R. F. Marquis, and being first duly sworn, testified as follows:

## Direct Examination

The Witness: My name is Ernest P. Morris. I live near Phoenix, have lived here 13 years. I am Deputy Clerk of the Superior Court of Maricopa County. I have known R. F. Marquis about nine years. I know the reputation of R. F. Marquis prior to August 9, 1939 for truth and veracity, honesty and integrity and for being a law abiding citizen, made up by what the people generally said about him. That reputation was good.

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## WILLIAM P. MAHONEY

was called as a witness on behalf of the defendant R. F. Marquis, and being first duly sworn, testified as follows: [666]

## Direct Examination

The Witness: My name is William P. Mahoney. I live in Phoenix and have lived here off and on since 1902. I am a member of the State Board of Social Security and Welfare. I am acquainted with R. F. Marquis. I have known him about six years. He was appointed on the Board the same time I was. I am acquainted with his reputation prior to August 9, 1939 for truth and honesty, as being a law abiding citizen, and as to his honesty and integrity, made up

(Testimony of William P. Mahoney.)

by what the people generally said about him here, that reputation was good.

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### BARRY GOLDWATER

was called as a witness on behalf of the defendant George H. Cornes, and being first duly sworn, testified as follows:

#### Direct Examination

The Witness: My name is Barry Goldwater. I am a merchant. I have been in business in Phoenix for many years, have lived here all my life. I have known the defendant, George H. Cornes, for about ten years. I am acquainted with his general reputation in this community for veracity, personal integrity and generally for being a law abiding citizen. That reputation is good.

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### A. M. TUTHILL

was called as a witness on behalf of the defendant George H. Cornes, and being first duly sworn, testified as follows:

#### Direct Examination

The Witness: My name is A. M. Tuthill. I am a physician and reside in the City of Phoenix, have lived here since the World War. I know the defendant George Cornes. I am acquainted with the general reputation which he bears in this community

(Testimony of A. M. Tuthill.)

for veracity, personal integrity and for being a law abiding citizen. That reputation is good. [667]

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#### H. R. ASKINS

was called as a witness on behalf of the defendant George H. Cornes, and being first duly sworn, testified as follows:

##### Direct Examination

The Witness: My name is H. R. Askins. I am in the Phoenix Auto Supply Company, have lived in Phoenix since 1913. I have known George H. Cornes around ten years. I am acquainted with the general reputation which he bears in this community for veracity, personal integrity, and for being a law abiding citizen. That reputation is good.

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#### GEORGE A. HOAGLAND

was called as a witness on behalf of the defendant George H. Cornes, and being first duly sworn, testified as follows:

##### Direct Examination

The Witness: My name is George A. Hoagland. I am a sales representative for Phoenix Motor Company, have lived in Phoenix since 1918, and been in business here since 1928. I know the defendant George H. Cornes. I know his reputation for verac-

(Testimony of Paul Bennett.)

ity, personal integrity and for being a law abiding citizen. That reputation is good.

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PAUL BENNETT

was called as a witness on behalf of the defendant George H. Cornes, and being first duly sworn, testified as follows:

Direct Examination

The Witness: My name is Paul Bennett. I am a tire merchant, have been in business in Phoenix since 1915. I know George H. Cornes. I know his general reputation in this community for veracity, personal integrity and as a law abiding citizen. That reputation is good.

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C. E. LaDUE

was called as a witness on behalf of the defendant George H. Cornes, and being first duly sworn, testified [668] as follows:

Direct Examination

The Witness: My name is C. E. LaDue. I am a food merchant. I have lived here 12 years. I know George H. Cornes. I am acquainted with the general reputation which he bears in this community for veracity, personal integrity and for being a law abiding citizen. That reputation is good.

## WILLIAM A. BALDWIN

was called as a witness on behalf of the defendant George H. Cornes, and being first duly sworn, testified as follows:

## Direct Examination

The Witness: My name is William A. Baldwin. I am President of the company that operates KOY. I have lived here about 13 years. I know George H. Cornes and know his reputation in this community for veracity, personal integrity, and for being a law abiding citizen. That reputation is good.

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## W. H. NORMAN, SR.

was called as a witness on behalf of the defendant George H. Cornes, and being first duly sworn, testified as follows:

## Direct Examination

The Witness: My name is W. H. Norman, Sr. I am in the nursery and flower business. I have lived here for 25 years. I know the defendant George H. Cornes and know his reputation in this community for veracity, personal integrity and for being a law abiding citizen. That reputation is good.

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## E. C. STULTZ

was called as a witness on behalf of the defendant Harry S. Marquis, and being first duly sworn, testified as follows:



(Testimony of E. C. Stultz.)

Direct Examination

The Witness: I am E. C. Stultz. I am in the retail drug business, have been a resident of Phoenix 29 years today. [669] I know Harry S. Marquis, have known him since 1931 or 1932. I am acquainted with his general reputation in this community for honesty and integrity and as to being a law abiding citizen. That reputation is good.

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MRS. SIMS ELY

was called as a witness on behalf of the defendant H. S. Marquis, and being first duly sworn, testified as follows:

Direct Examination

The Witness: My name is Mrs. Sims Ely. I have resided in Phoenix about 25 years. I have known Harry Marquis about 10 years. I know his family. I am acquainted with the reputation of Mr. Marquis for honesty, integrity and as being a law abiding citizen. That reputation is very good.

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C. L. LANE

was called as a witness on behalf of the defendant H. S. Marquis, and being first duly sworn, testified as follows:

Direct Examination

The Witness: My name is C. L. Lane. I am Auditor, Motor Vehicle Division, State Highway

(Testimony of C. L. Lane.)

Department. I have lived in Phoenix since 1928. I have known Harry Marquis about 10 years. I know his reputation in this community for honesty, integrity and being a law abiding citizen. That reputation is excellent I would say.

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### C. E. GRIGGS

was called as a witness on behalf of the defendant H. S. Marquis, and being first duly sworn, testified as follows:

#### Direct Examination

The Witness: My name is C. E. Griggs. I am a civil engineer. I have held various official positions with the City of Phoenix. I have known Harry Marquis a little over 10 years. I know his reputation in this community for honesty, integrity [670] and being a law abiding citizen. That reputation is very good.

Thereupon, the defendants all announced that they rested their cases.

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### IN REBUTTAL FOR THE GOVERNMENT

#### E. P. HAIR

was called as a witness on behalf of the Government in rebuttal, and having been heretofore duly sworn, testified as follows:

(Testimony of E. P. Hair.)

Direct Examination

Mr. Flynn: Mr. Hair, I show you Government's Exhibit 18 and I ask you if in your examination of this exhibit and the other exhibits in evidence you have determined, discovered, or in your examination have found any entries regarding transactions between J. Elmer Johnson and either of the companies involved here, the State Securities Corporation or Union Reserve Life Insurance Company.

Mr. Frazier: Just a minute, your Honor. We object to this examination because it could have no purpose in this case under any circumstances. What possible purpose could this have? Elmer Johnson has not been a witness here, there hasn't been anybody on direct or cross examination asked anything about any business with J. Elmer Johnson; not proper rebuttal testimony, certainly. Irrelevant, incompetent and immaterial and we object to it.

The Court: Will the Reporter read the United States Attorney's question, please?

(The question was read by the Reporter.)

Mr. Whitney: May I ask if your Honor allows that to be answered, it may be answered yes or no, because when we get into this thing a little further I might have a question to ask on voir dire.

The Court: Well, the question may be answered. [671]

(Testimony of E. P. Hair.)

The Witness: Yes.

Mr. Frazier: Exception.

Mr. Wilson: Exception.

The Court: Exception is noted and allowed.

Mr. Flynn: All right, I will ask you to turn then to the part of Government's Exhibit 18 in which any of those items are recorded, and after you have found one, I will ask you to read the entry, the date and what the book contains in regard to that transaction?

Mr. Whitney: Just a second, may I ask a question on voir dire?

The Court: Yes, you may, Mr. Whitney.

Mr. Whitney: Mr. Hair, what is the date of that transaction?

The Witness: This one is July 3d, 1930.

Mr. Whitney: No objection.

Mr. Frazier: We object to the question, your Honor, for all the reasons heretofore given as not proper rebuttal, not proper impeaching testimony of anyone who has been a witness here, and we submit that it is prejudicial to admit the testimony of this kind in rebuttal. If it ever had any place in the case at all, it might have been on the Government's case in chief. It could not possibly be rebuttal testimony, because there has been no testimony on the part of any defendant in this case as to J. Elmer Johnson, and what could it possibly rebut?

(Testimony of E. P. Hair.)

Mr. Whitney: If the Court pleases, may I say this. I think Mr. Frazier is eminently correct as to any testimony of Mr. J. Elmer Johnson, however, I did introduce a letter in there concerning what Mr. Johnson said about this company, which I am very much depending upon in this case along with other testimony.

Mr. Flynn: The testimony of Mr. Marquis, your Honor, [672] both on direct and cross-examination was, that he had taken up a lot of the transactions and activities of this company up with the Commission and with the Investment Department of the Corporation Commission. The record in this case was, that was Mr. Johnson's connection with the Corporation Commission. Now, then, we believe in view of the relationship between these companies and the Corporation Commission and the testimony of Mr. Marquis, we have the right to show what transacted between Mr. Marquis and anybody connected with the Corporation Commission.

Mr. Frazier: We renew our objection, your Honor, to all of that?

The Court: The objection is overruled.

Mr. Frazier: May we have an exception?

The Court: And an exception allowed for each one of the defendants who asked for one.

Mr. Carson: That exception, under the stipulation entered into, goes to the benefit of all, whether they ask for it at this time or not, your Honor?

(Testimony of E. P. Hair.)

The Court: You are right, Mr. Carson. The exception will inure to the benefit of all the defendants.

The Witness: Under date of July 3d, 1930, there is an entry in this book reflecting the issuance of a check in the amount of \$1,170.00, the explanation being "J. E. Johnson, loan". The charge of that amount is to the general ledger which will appear in another exhibit.

Mr. Flynn: Of what company?

The Witness: This is the book of Marquis, Cornes and Marquis.

Q. And what does the general ledger refer to there, the same?

A. The same, yes, sir. [673]

Q. Are there any other entries in this book?

Mr. Frazier: If the court pleases, our objection may go to all of this?

The Court: To this line of testimony.

Mr. Frazier: To this line of testimony, and an exception noted to the overruling of it.

The Court: Let the record so show.

The Witness: Under date of August 18th, 1930. This record reflects the issuance of a check in the amount of \$30.00, the explanation being "J. E. Johnson". The charge is to the general ledger with the explanation here "Notes receivable".

Mr. Flynn: Any other entries in here?

The Witness: I don't find any other in this

(Testimony of E. P. Hair.)

book. I have examined the check stubs and cancelled checks on the State Securities Corporation and the cash book of the Union Reserve Life Insurance Company for 1935. The entries and check stubs do not cover the same transaction as are in the cash book of the Union Reserve. The cash book is the Union Reserve, separate transactions in there and the check stubs of the State Securities Corporation.

Q. Will you turn to the entries in the check stubs?

Mr. Carson: What is the number of it, Mr. Flynn; indentify it, what he is looking at, will you?

The Witness: No number on this particular part of it. These are check stubs of the State Securities Corporation.

Mr. Flynn: Exhibit 23. Will you read the entry?

Mr. Frazier: We repeat our objection.

The Court: Yes, very well.

Mr. Frazier: The record will show the objection and the ruling of the Court.

The Witness: Under date of January 16th, 1935, check [674] No. 7712 in the amount of \$30.00, payable to J. E. Johnson, with no explanation. I find no explanation in any of the books of the company as to that check. Under date of April 13, 1936, check No. 7917 in the amount of \$50.00 pay-

(Testimony of E. P. Hair.)

able to J. Elmer Johnson. The explanation on the check stub is "MCM". Under the same date, the next check 7918 in the amount of \$50.00, payable to J. Elmer Johnson, the same explanation "MCM". The same date, next check, 7919, amount of \$50.00, payable to J. Elmer Johnson, explanation is "MCM". Under date of May 17, 1935, check No. 7980 in the amount of \$100.00 payable to J. E. Johnson, no explanation. The same date, next check, No. 7981 in the amount of \$50.00 payable to J. E. Johnson, with no explanation. There are entries recording other transactions between Mr. Johnson and the company shown in the cash book of the Union Reserve Life Insurance Company for 1935. That is Exhibit 10 in evidence.

Mr. Frazier: I make the same objection, your Honor.

The Court: Record shows the objection to the question by Mr. Frazier.

Mr. Frazier: An exception.

The Court: And overruled and with exceptions.

The Witness: Under date of February 1, 1935, the cash book shows check No. 4776 in the amount of \$85.00, payable to J. E. Johnson. That is the Union Reserve Life Insurance Company record, and that item is charged "Agency expense". Under date of February 18, 1935, check No. 4886 in the amount of \$25.00, payable to J. E. Johnson. The



(Testimony of E. P. Hair.)

charge is to the State Securities Corporation. Under date of February 25, 1935, check 4917 in the amount of \$25.00, is payable to J. E. Johnson. The charge is to "Agency expense". Under date of March 1, 1935, check No. 4962 in the amount of \$50.00, payable to J. E. Johnson, and the charge is to "Agency expense". Under date of March 9, 1935, check No. 5039, [675] payable to J. E. Johnson in the amount of \$25.00. The charge is to "Agency". Under date of March 15, 1935, check No. 5077, in the amount of \$50.00, payable to J. E. Johnson, the charge is to "Agency". Under date of March 21, 1935, check No. 5119, payable to J. E. Johnson in the amount of \$40.00 and the charge is to "Agency". Under date of March 22, 1935, check No. 5129, payable to J. E. Johnson in the amount of \$146.50 and the charge is to "Agency". Under date of March 28, 1935, check No. 5169, payable to J. E. Johnson in the amount of \$30.00, the charge is "Agency". Under date of June 10, 1935, check 5743, payable to J. E. Johnson in the amount of \$25.00, the charge is to "Agency expense". This is all I find. I have examined Defendants' Exhibit A in evidence, particularly the document dated March 10, 1931, addressed to Arizona Corporation Commission, consisting of six sheets of paper signed by J. Elmer Johnson, Examiner. I have made an examination of the financial statements contained in Defendants' Exhibit A in evidence. I have examined the books in evidence here, exhibits in evidence, the books and records of

(Testimony of E. P. Hair.)

State Securities Corporation and have prepared a balance sheet covering the same date as the financial statement contained in this exhibit. Thereupon, a document was marked Government's Exhibit 67 for identification.

The Witness: Government's Exhibit 67 for identification is the balance sheet of State Securities Corporation as of the date of the financial statement contained in Defendants' Exhibit A, as of January 31, 1931.

Mr. Flynn: We offer this in evidence.

Mr. Whitney: What is this, of 1931?

Mr. Flynn: Yes.

Mr. Frazier: May we see it, please.

(The document was handed to Mr. Frazier by Mr. Flynn.) [676]

Mr. Frazier: May I ask a question on voir dire?

The Court: Yes.

Mr. Frazier: Mr. Hair, from what books and records did you determine the notes receivable as of January 31, 1931?

The Witness: From the general ledger of the State Securities Corporation.

Mr. Frazier: Will you get it, please.

(The witness complies.)

Mr. Frazier: Do you know whether that book includes and contains all of the notes receivable at that time?

The Witness: I don't know.

(Testimony of E. P. Hair.)

Q. Do you know whether—now, where did you get the list of the mortgages?

A. The same book. All those items are from this general ledger.

Q. And will you explain why you carried the legal reserves in the assets and not in the liabilities?

A. That is the way it is set up in the general ledger.

Mr. Frazier: We object to the introduction of this Exhibit 67 in evidence, your Honor, for the reason that it does not purport in any way to contradict or change the financial statement set out in the exhibit which has been referred to by counsel and this witness. It does not tend to prove or disprove any issue in this case; it is not proper rebuttal testimony; it is irrelevant, incompetent and immaterial and does not purport to be accurate and correct.

The Court: Well, the objection is overruled.

Mr. Frazier: May I have an exception?

The Court: An exception will be allowed to all defendants.

Whereupon, the document was received as Government's Exhibit 67, which abstracted to the issue is: [677]

(Testimony of E. P. Hair.)

## GOVERNMENT'S EXHIBIT No. 67

Is a balance sheet of State Securities Corporation as of January 31, 1931 as shown by the general ledger, which is as follows:

State Securities Corporation	
Balance Sheet as of January 31, 1931	
per General Ledger	
<b>ASSETS</b>	
Notes Receivable .....	\$300,915.—
Mortgages .....	28,400.—
Accrued Interest Receivable.....	515.16
Legal Reserve .....	31,128.50
Sales Expense, Commission on Bonds.....	24,978.25
	_____
Total Assets.....	\$385,936.91
<b>LIABILITIES AND NET WORTH</b>	
Bonds Sold .....	391,000.—
Marquis-Cornes-Marquis .....	28,346.13
Profit and Loss.....	33,409.22 (Red)
	_____
Total Liabilities and Net Worth.....	\$385,936.91

[678]

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Mr. Flynn: Mr. Hair, I will ask you to take Government's Exhibit 67 and the financial statement which is contained in Defendants' Exhibit A, that I have referred to, as of January 31, 1931, and take both of these financial statements and compare the different items.

Mr. Frazier: The same objection, your Honor.

(Testimony of E. P. Hair.)

The Court: Very well, the record may so show.

Mr. Frazier: And an exception.

The Court: On behalf of all the defendants and the exception noted to the overruling of the objection.

The Witness: Taking the assets first. The statement of J. Elmer Johnson—

Mr. Frazier: Just a minute, your Honor, we want to make a further objection.

The Court: All right.

Mr. Frazier: That this testimony is pure hearsay, not having been shown to have been communicated to any of these defendants or that they knew anything about it, or were charged with any knowledge of the making of it. It is taken from a report ostensibly made by an employee of the Corporation Commission of the State of Arizona. There has been no showing that the witness Hair's computation and statement has been made from the same records that the other statements was made from, and could not be anything except the purest kind of hearsay as to all of these defendants.

The Court: Well, the ruling will prevail.

Mr. Frazier: May I have an exception?

The Court: An exception is noted.

The Witness: The first asset listed in the statement of J. Elmer Johnson is "Deferred premium

(Testimony of E. P. Hair.)

on bonds", and then in parenthesis, "Full reserves" set up in the amount of \$6,150.07. [679] There is no similar item in the balance sheets which I have prepared. The next item of assets in the report of J. Elmer Johnson is "Commission earned", in parenthesis "Stock fully paid and issued" in the amount of \$6,939.00. There is no similar asset in the balance sheet which I have prepared. The next assets in the report of J. Elmer Johnson is "Notes receivable", in parenthesis "Stock subscriptions". The amount is \$32,760.00. In my balance sheet I have an asset "Notes receivable" \$300,915.00. The statement of J. Elmer Johnson has "First mortgages", \$28,800. In my statement I have \$28,400. The next item in the report of Johnson is "Accrued interest" \$572.66. I show, according to the books \$515.16. The next item in Johnson's report is "Other securities" \$525.00. I don't have any such item. The next item in Johnson's report is "Cash in office and banks", \$6,576.89. There is no such asset listed in my financial statement. Then we come to the liabilities. The first item shown in the report of J. Elmer Johnson is "Legal reserve on bonds" \$26,723.10. The only similar item I have among liabilities is the item of "Bonds sold", which is \$391,000. The next liability in the report of J. Elmer Johnson is "Stock issued, fully paid", 2,225 shares at \$10.00 making \$22,250.00, and 130 shares at \$20.00, making \$2,600.00, and I have no such liability in my statement. The next item in

(Testimony of E. P. Hair.)

his statement is "Partial payments on stock subscriptions, \$9,545.00", and I have no such item in my balance sheet. The next item is "Deferred commissions on notes receivable", \$6,226.00. I have no such item, and his next figure on the liability side is "Surplus", \$14,679.52. In my statement I have a profit and loss figure, a deficit of \$33,409.22. I have among my liabilities the item "Marquis, Cornes and Marquis", \$28,346.13. That does not appear in the liabilities on the statement of J. Elmer Johnson. I have no other records in connection [680] with J. Elmer Johnson's transactions with the company. In making up my work sheets showing the withdrawals, I did not include traveling expenses of Harry S. Marquis in the total withdrawals which he testified about earlier in the trial. Where the books showed any of the officers had deposited money to the credit of the company I showed a deduction for those amounts against the withdrawals so that the figures I testified to were net.

### Cross Examination

Mr. Whitney

The Witness: J. Elmer Johnson was not indicted in this case because of the statute of limitations. Exhibit 18 is the book Marquis, Cornes and Marquis used to record some entries in. Exhibit 10 was the cash book of the Union Reserve for 1935.

(Testimony of E. P. Hair.)

All of the transactions with J. Elmer Johnson were prior to May, 1935.

### Cross Examination

Mr. Frazier

The Witness: The entries on July 3, 1930 of \$1170.00 and August 18, 1930 were posted. One of them had the notation "Notes receivable" and both were posted to the ledger account of the "Notes receivable". I don't know anything about that other than what I have seen in the books. The next entry I found after 1930 was January 16, 1935. I don't know if J. Elmer Johnson was still with the Arizona Corporation Commission on that date. I didn't know he left on January 1, 1935 and went to work for the Union Reserve Life Insurance Company. I don't know whether the statement he made is correct, because I don't know what records he had at that time. I am taking the general ledger of the State Securities Corporation. From what I had to work with, I would say his statement is incorrect. The cash item of \$6,576.89 is not shown in the State Securities general ledger. I don't know whether he had any record which would show that such amount of cash. The books reflected they did not. My knowledge from the books of the State Securities Corporation [681] is that they did not, other than by reference to the books I don't know whether they had the money or not. I don't know what the payments to J. Elmer Johnson from Jan-



(Testimony of E. P. Hair.)

uary 16, 1935 down to June 10, 1935 were for. Some of them were charged to agency expense. As I recall, those for the Union Reserve were charged to agency expense with the exception of one which was charged to State Securities Corporation. Thereupon the Government rested.

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## SUR-REBUTTAL FOR THE DEFENDANTS

EDGAR G. HAMILTON

was called as a witness in sur-rebuttal for the defendants and, being first duly sworn, testified as follows:

Direct Examination

Mr. Whitney

The Witness: I have never met J. Elmer Johnson. I have heard of him. I first heard of him when I went to work for the company. No one ever told me that Mr. Johnson was drawing money from either the State Securities Corporation or from Marquis, Cornes and Marquis, or the Union Reserve. I first learned of it today.

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RAYMOND F. MARQUIS

was called as a witness in sur-rebuttal for the defendants, and having been heretofore duly sworn, testified as follows:

(Testimony of E. P. Hair.)

Direct Examination

Mr. Frazier

The Witness: The items \$1,170.00, July 3, 1930 and August 23, of \$30.00, was the balance of a real estate loan made to G. L. Reay. I don't know exactly the relationship or connection of Mr. Reay with Mr. Johnson. I think they had some partnership in some cotton land out near Higley. I don't know anything about it. I authorized the payment of the money to J. Elmer Johnson because he produced the mortgage signed by G. L. Reay, and Mr. Vaughn of the Department and Mr. Claypool had made valuations of the place, and the loan was made. I gave [682] the money to J. Elmer Johnson because Mr. Reay authorized me to give it to him. J. Elmer Johnson quit working for the Corporation Commission in the early part of 1935. The items Mr. Hair read from the cash book paid to J. Elmer Johnson for work he did in the agency department and the various other departments of the company. He went to work for the company after the first of January, and these payments represented payments to him for services.

Cross Examination

Mr. Flynn

The Witness: I don't know whether he was in charge of the Investment Division of the Corpora-

(Testimony of Raymond F. Marquis.)

tion Commission prior to the time he went to work for the company. Our transactions about the sale of securities with the Corporation Commission were not altogether with Mr. Johnson. I didn't know the relationship between Mr. Johnson and Mr. Reay. The mortgage was apparently good and we took it. I didn't know at that time that the land was owned by Mr. Reay and Mr. Johnson together. Thereupon a letter was marked Government's Exhibit 68 for identification.

Mr. Flynn: I show you Government's Exhibit 68 for identification, Mr. Marquis, and ask you if you dictated that and signed the original of that letter?

The Witness: "I am in receipt of letter from J. Elmer Johnson stating that he had requested you to call at this office in regard to mortgage held by this company on 90 acres of land owned by Mr. Johnson and yourself." On that date he told me. I don't remember the exact writing of this letter nor the substance of the dictation. That is my dictation.

Thereupon, the letter was offered in evidence as Government's Exhibit 68.

Mr. Carson: We object to it too, your Honor, no foundation, irrelevant, incompetent and immaterial for this purpose [683] in this case, and pure hearsay as far as the defendant Canning is concerned, which objection was by the Court over-

(Testimony of Raymond F. Marquis.)

ruled and an exception duly taken and entered in the record.

Whereupon, the document was received as Government's Exhibit 68 in evidence, which abstracted to the issue is: [684]

GOVERNMENT'S EXHIBIT NO. 68

March 26, 1937

Mr. G. L. Reay,  
R. F. D.  
Winkleman, Arizona

Dear Mr. Reay:

I am in receipt of letter from J. Elmer Johnson stating that he had requested you to call at this office in regard to mortgage held by this company on ninety (90) acres of land owned by Mr. Johnson and yourself.

We have been expecting you, but up to this date we have not had the pleasure of your visit. It is necessary that some adjustment of this past-due matter be made; hence I am asking that upon receipt of this letter that you give personal attention to the item.

I am enclosing stamped, addressed envelope for your convenience in advising when you can meet me at our office.

Very truly yours,

R. F. MARQUIS

Secretary-Treasurer

RFM:MD [685]

(Testimony of Raymond F. Marquis.)

The Witness: Mr. Hamilton had no knowledge of the transaction in that letter nor did the defendant George Cornes. I think the interest on that mortgage was paid by charging it to the State Securities Corporation on the books of the company. Mr. Harry Marquis had nothing to do with the letter.

Thereupon, defendant R. F. Marquis rested. [686]

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The Government having rested its case and each of the defendants having rested his case, the following proceedings were then had:

Mr. Carson: Now, if the court please, on behalf of the defendant Earl Canning, I move the court to direct the jury to return a verdict of not guilty on each and every count of the indictment generally and severally, and I do not presume that it is necessary for me to repeat again the grounds that were made at the close of the Government's case, but do desire to call your Honor's attention to the fact that there has not been one word of evidence, in my judgment, either in the Government's case or during the presentation of the defendants' case that would indicate or that would justify anybody on this jury returning a verdict of guilty as against the defendant Earl Canning. There has been no evidence that any statement that he helped to prepare was prepared fraudulently or with any intent to defraud. There has been no evidence that he profited in any way from this except by payment for his time at his regular rate of \$2.00 an hour and \$3.00 an hour.

On the contrary, the evidence is that the statements that he prepared did correctly reflect the books of these companies insofar as they purport to do so, and that as to the other items, actuarial items and calculations, they were made by Mr. R. F. Marquis and furnished to him.

Mr. Hair testified that he likewise was not an actuary and he could not say that those actuarial calculations were incorrect, and nobody has testified in this case that they were in any respect incorrect, so I can not see how, under the state of this evidence, any verdict of guilty against the defendant Earl Canning on any count could be, by this court, permitted to stand, and under such conditions I believe it to be the duty of the court to instruct a verdict of not guilty, and we now request the court to do so as to the defendant Earl Canning on each and every [687] count in the indictment, and without repeating, I want the court to have in mind the argument made at the end of the Government's case.

Mr. Whitney: Mr. Hamilton, at this time, moves to strike all the testimony given in this case of events that transpired subsequent to January 1st, 1938, upon the grounds that under the conspiracy count in the indictment; that is to say, Count Six, the conspiracy or rather the alleged conspiracy ended on January 1st, 1938, and any evidence subsequent to that date such as the issuance of 23,315 shares of stock evidenced by Stub No. 912 on or after February 7th, 1938, would be wholly irrelevant, incompetent and immaterial and without the

bounds of the indictment as it affects Count Six of the conspiracy charge.

Now, we make a further motion to strike all testimony relating to any scheme or artifice to defraud that was given in evidence here, and that relates subsequent to September, 1937, the last date of the indictment letter, on the grounds that the scheme can not—a scheme to defraud can not be evidenced by something that transpired long after the crime has been consummated, if there was a crime.

I refer now to the first Greenbaum case, where they said that a letter sent out and representations made four months after the mailing of the indictment letter on the 1st of April, 1930, and this was August 13th, 1930, where they prove representations on the guiding hand letter, the Circuit Court held that this could not evidence a scheme to defraud that had been committed, consummated four months prior to that time; and we also move to strike all the exhibits that we originally moved to strike at the end of the Government's case, on the grounds they are irrelevant, incompetent and immaterial and have no application to the defendant Hamilton.

Now, the defendant Hamilton, without waiting for your [688] Honor to rule on that, but assuming your Honor will rule first on the motion, now moves for a directed verdict on Count Six of the indictment, on the ground that no conspiracy has been shown; that is to say, no agreement between the parties to a common end, and that there is insufficient evidence here shown by circumstances, and that is the only way you can show this, because there

is no direct testimony, in fact the testimony is to the contrary, and so we move on the conspiracy count that this court direct the jury to return a verdict of not guilty, because the evidence is insufficient to sustain a verdict of guilty if one should happen to be returned, and I move on the first five counts of the indictment that the court instruct the jury to return a verdict of not guilty, because the evidence is insufficient to sustain a verdict of guilty on either of the first five counts, if a verdict should be rendered, for the reason that there is no evidence here directly, certain information directly and insufficient to show by circumstances that Mr. Hamilton at any time knew that the representations made by him were, in fact, false.

Mr. Frazier: As far as the defendant R. F. Marquis is concerned, and without taking up any more time, R. F. Marquis moves to strike the same matter that was made for the defendant Hamilton, adopts that; moves for a directed verdict on the Sixth Count for the same reasons as adopted and given, and on the other five, move for a directed verdict on the other five counts in the indictment for the reasons given by counsel for Mr. Hamilton and for the other reasons urged at the end of the Government's case, and that will save repetition on all those, and submit the motion on the Sixth Count in the indictment.

Mr. Wilson: And the defendant Cornes, if the court please, at this time adopts the motions made by the defendant Hamilton for a directed verdict,



and the defendant Cornes moves that certain testimony embodied in that motion be stricken as to [689] the defendant Cornes, and the defendant Cornes further moves the court for an order directing the jury in this case to return a verdict of not guilty as against the defendant Cornes on the grounds stated in our original motion, and adopting all the grounds mentioned in the motion made on behalf of the defendant Hamilton.

Mr. Jones: The same motion on behalf of the defendant Harry Marquis, adopting the same motion made by counsel heretofore, and move for a directed verdict as stated by counsel for the defendant Hamilton.

Mr. Carson: On behalf of the defendant Canning, I would like for you to consider the motions to strike the evidence we also made on his behalf, and I would like to adopt them at this time for the reasons there stated.

The Court: Well, the general motions of counsel in the order that they have been made and the motions as made in behalf of each defendant will be denied and an exception will be noted and allowed.

Mr. Frazier: On behalf of all defendants?

The Court: Yes.

Mr. Whitney: An exception.

The Court: Very well.

The court then instructed the jury as follows:

#### THE COURT'S CHARGE TO THE JURY

Gentlemen of the jury, the defendants in this case, Raymond F. Marquis, George H. Cornes,

Harry S. Marquis, Earl Canning and Edgar G. Hamilton are jointly charged by the indictment with violations of certain laws of the United States, namely the first five counts of the indictment charging the defendants with violations of Section 338 of Title 18 of the United States Code Annotated, commonly designated as the statute pertaining to the use of the mails to promote frauds, and the sixth count [690] charges violations of Section 88 of Title 18 of the United States Code Annotated, conspiring to commit an offense against the United States.

The indictment was read at length to you at the opening of the Government's case, and it will serve no useful purpose to re-read the same at length to you at this time. You will take the indictment with you to the jury room to refer to as you may have occasion to do so during your deliberations. Briefly, the first five counts of the indictment charge that the said defendants above named did devise a scheme and artifice to obtain monies and properties from Guy J. Baker, H. E. Simmons, Mrs. Mary E. Bonar, Gerald Palmer and W. H. and/or Mrs. Helen G. Etz, and others whose names are to the grand jurors unknown and the public generally, said persons being referred to in the indictment as the persons to be defrauded, by means of false and fraudulent pretenses, representations and promises, said scheme and artifice to be effected by means of the Post Office Establishment of the United States. The scheme and artifice alleged to have been so devised

by the defendants to obtain money and property from said persons to be defrauded, and the alleged false and fraudulent pretenses, representations and promises made and to be made in furtherance of said scheme and artifice are alleged and set forth in count one of said indictment, and incorporated in counts two, three, four and five of the indictment, and in furtherance of said scheme or artifice, the letters and printed matter as specified in each of said counts are alleged to have been deposited in the mails.

The Court instructs the jury that this trial follows the finding of a Grand Jury of this Court of a bill of indictment against the defendants herein, filed in this Court. The office of an indictment is to formulate the charge, and to limit the frontiers of an investigation by a trial jury. It is, therefore, [691] nothing but the vehicle by which the issues it sets forth come upon the trial docket of this Court. It follows that not in the slightest degree does it function as evidence, when, as here, a trial is had upon it. Consequently, you will not give the slightest weight to the fact that the issues of fact, which you are called upon to determine, have been in some measure considered by the Grand Jury. To no extent whatever, does any averment in the indictment suggest the fact of which it speaks, or the guilt of any defendant on trial, and you should ignore it entirely as effective for such office. It does not create even a suspicion of guilt as to any de-

fendant who has denied it by his plea of "not guilty".

Now, gentlemen, in order to convict the defendants, or either of them, of the crimes charged herein, or either of them, it is incumbent upon the prosecution to satisfy you beyond a reasonable doubt of the truth of every material allegation in the indictment. The law raises no presumption against the defendants or either of them, but every presumption is in favor of their innocence, and this presumption remains with them until such time in the trial of the case as the same is overcome by evidence beyond a reasonable doubt to the contrary.

It is not necessary, gentlemen, to prove that these offenses were committed at the exact times specified in the indictment. It is immaterial at what time the scheme was entered into, providing that the letter or letters were mailed in furtherance of such scheme, and within three years before the finding of the indictment. Under the charge of conspiracy, it must be proved that one or more of the conspirators committed one or more of the overt acts to effect the object of such conspiracy during the existence of the alleged conspiracy and within three years before the filing of the indictment. The indictment in this case was filed in this Court on August 9, 1938. The offense must have—— [692]

Mr. Frazier: If the Court please, 1939.

The Court: 1939, thank you.

The indictment was filed in this case on August 9, 1939. You will note, gentlemen, in your instruc-

tions that 1938 appears there and I thank you for your correction.

Mr. Frazier: Yes, sir.

The Court: The offense must have been proven to have been committed within the District of Arizona. As to counts one to five inclusive, it must be proven that the letters were mailed in the District of Arizona, and as to count six, that the conspiracy was entered into, and the acts in furtherance thereof proven to have been committed within the District of Arizona. If such have been proven to have been committed within the State of Arizona, I charge you as a matter of law that they have been committed within the District of Arizona. The District of Arizona embraces the entire State of Arizona.

Now gentlemen, I charge you that you are made by law, the sole judges of the facts in this case, and of the credibility of each and all of the witnesses who have appeared here before you, and of the weight you will give to the testimony of the several witnesses who have testified in the case. In determining the credibility of any witness and the weight you will give to his or her testimony, you have the right to take into consideration his or her manner while giving his or her testimony; his or her means of knowledge; any interest or motive he or she may have, if any be shown, and the probability or improbability of the truth of his or her statements, when considered in connection with the other evidence in this case.

If you believe that any witness has wilfully sworn falsely to any material fact in the case, then you have the right to wholly disregard the testimony of such witness, except insofar as his or her statements may be corroborated by other credible [693] evidence in the case, and/or by the facts and circumstances in evidence.

Now I charge you, gentlemen, that before you can find these defendants or either thereof guilty, you must find him or them guilty beyond a reasonable doubt. A reasonable doubt is just what the term implies as applied to evidence in criminal cases. It is such a doubt as you may entertain as reasonable men, after a thorough review and consideration of all the evidence—a doubt for which a reason, arising from the evidence or want of evidence, exists. It is not the mere possibility of a doubt, but a serious substantial and well founded doubt. Now, while it is true the Government is required to prove the guilt of the defendants and each of them beyond a reasonable doubt, it is not required to prove his or their guilt to a mathematical certainty. Such a thing as mathematical certainty cannot, of course, exist in the enforcement of the law. All that courts and juries can act upon is belief to a moral certainty. It may be said that everything relating to human affairs and depending upon moral evidence is open to some fanciful or possible error.

Now, the defendants in this case, gentlemen, are entitled to the individual opinion of each juror,

and no juror should vote for the conviction of a defendant as long as he entertains a reasonable doubt of the defendant's guilt, notwithstanding the opinions of others of the jury. You note, gentlemen, that a juror qualifies himself to make up his judgment only after he has given fair, full, impartial and candid consideration of the facts in evidence. This means that he should bring to bear upon the question, not only all his power of mind, but that he should freely consider the views of his fellows. A criminal case is not submitted to jurors as individuals. No one juror is legally competent to decide it adversely to the defendant on trial. It is submitted to the jury as a deliberative body, whose judgments [694] are worthy only when they are produced by the contributions to a right solution of each member. Each juror, therefore, should not only attempt to think out a solution for himself, but he should allow his fellows to assist in his thinking. Even though having arrived at an opinion, he should consider with an open mind the diverse opinions of others. He should test his conclusions by the views of his fellows and be ready not only to give his own advice, but also to listen to the advice of others. In theory, at least, gentlemen, a hung jury is seldom possible if every juror gives the same degree of fair and candid and cool-headed consideration to the case. That is so, because the processes of reasoning and common sense are fairly uniform with men of average ability and

reasonableness; and to such who are only competent for jury service, facts speak with much the same force. It is seen that the doctrine of reasonable doubt, therefore, is not a bug-a-boo, not a convenient excuse to avoid doing something unpleasant; not a cover for stubbornness, but simply a call to candid and fairminded men to be careful and not decide until they are convinced of the guilt of the individual, as charged, to a moral certainty. When you are convinced to a moral certainty, not an absolute certainty, but to a moral certainty, you are convinced beyond a reasonable doubt. The terms are convertible.

As jurors, you apply to the work before you the same method of reasoning and the same standard of comparison of the weight of facts clearly established in the evidence as you would apply under equivalent conditions to a problem before you for solution in private life. In both situations, your plain common sense, the education your experience and observations have brought you, are available with just the same degree of usefulness. Nothing results from your oath requiring you to reason differently or change your mature method of reasoning from the course you would pursue in your private affairs in determining a serious question. [695] The effect of your official position as jurors is to face you with an obligation to calmly and seriously study the evidence, to ascertain the clear existence of fundamental facts asserted to



have been shown in the evidence and to correlate them properly into a line of proof so that, as jurors, you are able to say that the ultimate facts of the guilt charged against a defendant is shown to a moral certainty, whereas, if it were a private matter, you might be satisfied with a solution which is supported by a mere preponderance of evidence.

The jury is instructed that there are two classes of evidence recognized and admitted in courts of justice, upon either of which juries may lawfully find an accused guilty of crime. One is direct or positive evidence of acts committed in the presence of a witness, and the other is proof by testimony of a chain of circumstances pointing sufficiently strong to the commission of a crime by a defendant, and which is known as circumstantial evidence. Such evidence may consist of plans laid for the commission of the crime, or any other acts, declarations or circumstances admitted in evidence tending to connect a defendant with the commission of the crime charged.

Crimes, as I have stated, may be proved by circumstantial as well as direct testimony, but the facts and circumstances in evidence should be consistent with each other, and with the guilt of the defendant charged, and inconsistent with any reasonable theory of a defendant's innocence.

In circumstantial evidence, it is not necessary that each circumstance relied upon be proved by the same weight and force of evidence, and be as

convincing in its conclusiveness of guilt as though it were the main issue in the case, but the circumstances may be combined together and thereby give strength to each other.

You are, however, instructed that if the evidence [696] relating to any circumstances in this case is, in view of all the record made, reasonably susceptible to two interpretations, one of which would point to a defendant's guilt, and the other of which, admit of his innocence, then it is your duty to consider such evidence, and adopt that interpretation which would admit of such defendant's innocence and reject that which would point to his guilt.

Where the evidence on any point is entirely circumstantial, yet is not only consistent with the guilt of the accused but inconsistent with any other rational conclusion, the law makes it the duty of the jury to convict, notwithstanding such evidence may not be as satisfactory to their minds as the direct testimony of credible eye-witnesses would have been, provided the jury are satisfied to a moral certainty and beyond a reasonable doubt that a defendant is guilty as explained in these instructions. The term "moral certainty" is the legal equivalent of the phrase "beyond a reasonable doubt".

Now, the respective sections of the statute applicable to this case are acts of Congress. It is no concern of the United States how many frauds are committed in this state, or in any other state not connected with the United States mails, because

the Constitution of the United States does not give Congress the right to interfere with such matters. It leaves the exercise of that power entirely with the state. But Congress has adopted the method which at least affects it in some manner, and this is by the medium of a law relating to the mails. Over the United States mails, the Government has, of course, full control, and has the right to see that they shall not be used as an instrument to further any scheme to defraud. It does not punish the fraud; it punishes a party for using the mails to defraud. In other words, the gist of the offense is the use of the mails. The policy of the United States is to prevent the [697] misuse of the mails of the United States in the furtherance of dishonest schemes or swindles. The Government intends that the post office establishment shall be used by the people for the purpose of legitimate business and social intercourse, and that it shall not be used for the purpose of furthering dishonest schemes or practices.

The first five counts of the indictment in this case charge the defendants with having devised a scheme or artifice to defraud in order to obtain money and property from many people by means of false and fraudulent representations and practices, and that in furtherance of that scheme the defendants had used the mails.

As I have stated, the United States has no concern with frauds, but is concerned to see that its

mails are not used for fraudulent purposes, so Congress has passed this law, which reads, so far as the same is applicable to this case, as follows:

“Whoever having devised or intended to devise any scheme or artifice to defraud, or for obtaining money or property by means of false or fraudulent representations or promises—shall, for the purpose of executing such scheme or artifice, or attempting to do so, place or caused to be placed any letter, post card, package, written circular, pamphlet or advertisement, addressed to any person residing within or outside the United States, in any post office or station thereof, or street or other letter box of the United States, or authorized depository for mail matter, to be sent or delivered by the post office establishment of the United States, or shall take or receive any such therefrom, whether mailed within or without the United States, or shall knowingly cause to be delivered by mail according to the directions thereon, or at the place at which it is directed to be delivered by the person to whom it is addressed, any such letter, postal card, package, writing, circular, pamphlet or advertisement” shall [698] be punished as specified in this law.

Now, to constitute the offense under the mail fraud statute, or either of them alleged charged in the first five counts of the indictment, three things are necessary:

First: That the defendants, or one or more of them, devised the scheme in said count of the in-

dictment set forth, or did aid or abet in the devising of such scheme;

Second: That said scheme was one to obtain money or property by means of false or fraudulent representations, promises or pretenses;

Third: That the said defendants, or either thereof, for the purpose of executing said scheme placed or caused to be placed in the post office at the place set forth in the respective counts of the indictment, to be sent and delivered by said post office establishment, the letter or letters and other documents so set forth in said count of the indictment.

If you are satisfied from the evidence beyond a reasonable doubt of the existence of the three constituents which I have enumerated, you will find the defendant or defendants of whose guilt you are so satisfied, "guilty" as charged in said respective counts of which you are so satisfied. If, however, the evidence fails to so satisfy you of said constituents respecting any count of the indictment, you will find the defendant or defendants of whose guilt you are not so satisfied "not guilty" as charged in that particular count of the indictment.

Now gentlemen, you are instructed that the words "scheme" and "artifice" as used in the statute includes any plan or course of action intentionally devised for the purpose of deceiving and tricking others, and thus fraudulently obtaining their money or property.

You are instructed that it is not incumbent upon the Government to prove every element of the scheme to defraud [699] alleged in the various counts of the indictment, but it is sufficient in that particular if a scheme to defraud is shown to have been devised, and such scheme is substantially that described and set out in the respective counts of the indictment.

As to the scheme or artifice alleged, the Government must, however, show by proof convincing you beyond a reasonable doubt that as to one or more of the separate lines of activities in which one or more of the defendants participated, there did come into activity a scheme or schemes to obtain money or property by means of false pretenses, representations or promises denounced in the indictment, and that the defendants herein had knowledge of the same.

As I have already pointed out, the first five counts of the indictment charge as a part of the scheme to defraud, various false representations, pretenses and promises alleged to have been made by the defendants, or some of them, as a part of the scheme. The Government need not prove that the scheme was fraudulent in its inception, nor that any defendant who entered upon the execution of the enterprise did so with a present intention to participate in the alleged fraudulent scheme or practices.

Now, the intent to defraud in this case, like the intent to defraud in any similar case, is a question

of fact and not a question of law, to be proved as every other essential fact in the case must be proven; that is to say, beyond a reasonable doubt.

I charge you, gentlemen, that in every crime or public offense there must exist a union of act and intent.

Intent to defraud is an essential element in the perpetration of the offense charged against the defendants in the first five counts of the indictment. You are instructed that every person intends the natural and ordinary consequences of his acts. Wrongful acts, knowingly and intentionally committed [700] cannot be justified on the ground of innocent intent. This question of intent, however, like all questions of fact, as I have stated, is solely for the jury to determine from all the evidence in the case.

However, in the offenses charged in the first five counts of the indictment, there need not be any intent to use the mails. If any person plans a method of defrauding any person or number of persons by means of false representations, promises and pretenses, he may not even have intended to use the mails at all, but if, during the course of the plan he or any one under his direction uses the mails to carry out his fraudulent enterprise, he becomes guilty of violating this statute.

It is, of course, not incumbent upon the Government to establish that every one of the representations, pretenses or promises alleged in the various

counts of the indictment were made or to be made, so long as it does establish that a sufficient number of them were made by the defendants, or either of them in furtherance of the scheme or artifice to defraud as alleged in the indictment.

It is not essential that the Government prove that any person was actually defrauded by the alleged scheme. It is the scheme to defraud, not its success, and the use of the mails in furtherance of the scheme, which are the elements of the crime charged in the first five counts of the indictment herein.

Where two or more persons jointly devise and execute a scheme to obtain money or property by means of false and fraudulent pretenses, representations or promises by the use of the mails, they thereby become in effect partners in the criminal purpose of so using the mails to defraud. If they do, the acts of each thereafter during the existence and execution of the scheme to obtain money or property by false and fraudulent promises, representations and pretenses, become the acts of all [701] of the partners and each may be convicted of the mailing of a letter which one of his partners caused to be mailed in the execution of the scheme or artifice.

You are instructed, gentlemen, with respect to the declarations of one defendant made by him outside of the presence of any other defendant, that before such declarations are competent as to any



such absent defendant, it must be proved beyond a reasonable doubt, by independent evidence, that the scheme or artifice to defraud alleged in the indictment had been devised, and that such absent defendant was a party thereto.

Each defendant now on trial has the right to have you, and it is your duty to consider the evidence with respect to him and determine whether or not he was a participant in the alleged scheme or artifice to obtain money by false pretenses, representations or promises. In determining the question as to whether any particular defendant participated in the alleged fraudulent scheme or artifice, if you find that there was such, you can only take into consideration the statements, actions and conduct of the particular defendant, and his own connection with the actions of the others, as shown by the evidence, independent of any declarations or statements by other parties to the criminal partnership, and unless you find from such evidence beyond a reasonable doubt that he was a party to the fraudulent scheme or artifice, if there were or was such, then it would be your duty to find him not guilty, and it is only after you find from such evidence independent of any statement or declaration by others, that he was a party to the scheme or artifice, and while he was a party to it, that the statements and declarations or conduct of other parties to the original partnership may be considered as if made by him.

The false representations, promises and pretenses in order to come within the statute, must have been made knowing them to be false, or made with reckless disregard as to whether they [702] were false or true. If the statements and representations were made by the defendants, or either of them, in the belief that they were true, that belief would be a complete defense so far as that particular defendant is concerned, however inaccurate the statements turn out to be, and he would be entitled to an acquittal unless the statements and representations were made with reckless disregard to their truth or falsity. The defendant's belief on this subject at the time of forming or continuing the scheme is, therefore, a controlling question in determining the guilt or innocence of the defendants.

Whether the testimony as to the belief of the defendants, or either of them, and of the good faith of the defendants is credible, and whether the testimony supports such belief, are questions of fact for you, gentlemen, to decide.

The Court instructs the jury that you should presume that parties in their business relations are prompted by honest motives. Fraud must be proved by clear and satisfactory proof and beyond a reasonable doubt and to a moral certainty.

The Court instructs the jury that in arriving at your verdict in this case you must take into consideration all of the facts and circumstances. Business adversity, especially in times of abnormal busi-

ness conditions, does not necessarily spell fraud. The good faith of any defendant in a prosecution of making use of the United States mails in carrying out an alleged scheme to defraud is ordinarily a complete defense.

With respect to the books of account and other records of the State Securities Corporation and the Union Reserve Life Insurance Company, concerning which testimony has been admitted, you are instructed that before any entry in such books can be considered by you in determining whether any defendant herein was a party to the scheme or artifice to defraud as alleged in the indictment, it must first be proved to you beyond a reasonable [703] doubt that such defendant made or caused to be made that particular entry, or that it was made with his knowledge or under his supervision, such book entries being classed as acts or declarations of the defendant making the same or causing the same to be made. However, such entries are admissible against any defendant whom you find by independent evidence to be a party to the scheme or artifice to defraud, and thereafter such entries can be considered in determining the guilt or innocence of such defendant.

Now gentlemen, it is common knowledge that most business enterprises and security offerings are aided by advertisements in the newspapers, circular letters and other printed matter passing through the mails, and at every hand we see claims of worth, prospective earnings, returns and results

which we know cannot be fully substantiated. Parties who have anything to sell have the habit of puffing their wares, and we are all familiar with the fact that it is a very prevalent thing in the course of business to exaggerate the merits of goods and other property people have to sell, and within any proper reasonable bounds such practice is not criminal. It must amount to a substantial and wilful deception before it can be considered as criminal.

Now, gentlemen, there is one thing that you must keep in mind during your deliberations, and that is that under our system of law, men are not punished for mere mistakes or mere errors of judgment. They are punished only for intentional wrongdoing, therefore no matter how unsound, how impracticable or how visionary a scheme may be, if there is no intention to defraud or to obtain money by false pretenses, representations or promises, there is no such scheme as is denounced by this law.

On the other hand, no matter how sound or how practical a scheme may be, if it is the intention of those devising it or executing it to obtain money by false representations, false pretenses or false promises, it is such a scheme as the statute [704] contemplates, so that the question of intent is a vital question, as the Court has already instructed you, in this case.

With respect to the question of fraudulent intent, it may be said that its existence or non-existence is to be determined by you from all the facts

and circumstances admitted in evidence, and your practice and experience in daily observation of the intents and acts of men will materially aid you in determining this matter of intent. The intent with which a given act is done, is more clearly and conclusively shown by the act itself, or by a series of acts, or by the circumstances under which the acts are committed, than by any words or explanation of the actor. In many cases the actions of men speak their intentions more clearly and truthfully than do their words.

You should understand, gentlemen, and I think it is especially important in this case you should understand that the terms of the act are such that fraud attempted in the execution of a plan or scheme whose aims are worthy is within its provisions. That is to say, that if one in charge of a legitimate business conceives a plan to promote it by fraudulent acts, and then, to help the fraudulent conception, he uses the mails, he becomes liable, no matter whether the object for which the fraudulent act is done is good or whether the intention is to benefit in the end the man deceived.

You are instructed that even though you should find that the defendants had an absolute belief that the business enterprises mentioned in the indictment and testimony were good business propositions and valuable, and would return profits to the persons interested therein, such belief will not justify the making of false and fraudulent representations or promises in order to secure the capital from

others, by the sale of stock; and if you are satisfied from the evidence beyond a reasonable doubt that the defendants, or either of them, made any of the material repre- [705] sentations and promises charged in the indictment, and that such representations and promises were false, and the defendants, or either of them, knew that such representations or promises were false, and you further find that such representations or promises were made for the purpose of carrying out the scheme or artifice to defraud, then you would find such defendant or defendants of whose guilt you are so satisfied, "guilty as charged"; otherwise, you would find the defendant or defendants of whose guilt you are not so satisfied, "not guilty".

It is the law, gentlemen, that when the defendants, or either of them, incorporate statements or reports of others in his or their literature or printed matter, he or they adopt them as their own, and in such case they are responsible for such statements or reports, as if they or any of them were the authors of the same.

Now gentlemen, I charge you that whoever directly commits any act constituting an offense defined in any law of the United States, or whoever aids, abets, counsels, induces or procures its commission, is a principal, and to be prosecuted and punished as such. In other words, whoever directly does the thing that is a violation of law is a principal, as is also one who aids, abets, counsels, induces or procures the doing of the act.

One or more persons may form and accomplish an offense as charged in the first five counts of this indictment, with or without assistance, but all who, with criminal intent, or with knowledge of the criminal character of the enterprise, join themselves even slightly to the principal members, are subject to the statute, though they may know nothing but their own share in the aggregate wrongdoing. This applies to employees, if such employees have knowledge of the unlawful scheme or artifice to defraud.

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It is the duty of an employee to know the nature of the business being transacted by his principal, and if it is brought to his knowledge and he ascertains that the law is being violated by his principal, and he still continues in such employment, and by his work and labor, though such work and labor may be merely routine, he is regarded as a principal in whatever criminal acts may be committed, and punishable as such.

It must be shown, gentlemen, beyond a reasonable doubt as to each of the first five counts of the indictment that the letter, circular or other matter therein described was actually sent through the mails, in the interest and furtherance of the scheme to defraud; that it was mailed in the District of Arizona by some one, defendant or employee, authorized to put it in the mails. It is not necessary to show that any defendant actually deposited the letter, if the circumstances in evidence tend to show that it was done at the direction or by the authority of the de-

defendants, or any of them who were parties to such scheme or artifice. It is not necessary that the letter or writing in any instance indicate on its face any fraud, or that it was anything else than an every day and innocent communication. But either by its terms or by extrinsic testimony, it must be shown beyond a reasonable doubt to have been intended to be a transaction to further some feature of the fraudulent scheme, in furtherance of which the letter is alleged to have been mailed.

The official post mark of the post office, appearing on the letter or envelope containing the same set up in the respective counts of the indictment and which have been introduced in evidence is prima facie proof that any letters contained therein were mailed at the post office so appearing on said post mark.

You understand, of course, gentlemen, that the charge against these defendants is not embezzlement.

In considering the evidence in this trial and determining [707] therefrom the guilt or innocence of the defendants, you should consider, among other things, whether the defendants have accounted properly for money coming into their hands in the conduct of the business of the corporations alleged in the indictment only for the purpose of determining their good faith in the business or businesses described, and ascertaining their intent in their operations and activities as officers or employees of said companies, in mailing or causing to be mailed the letters alleged in the several counts of the in-



dictment. The question of whether or not any defendant or defendants defrauded one or both of said companies is not material for any other purpose.

You are not called upon to find any defendant guilty or not guilty of embezzlement or defrauding either or both of the companies. Whether the monies coming into their hands were properly accounted for or not will not justify their acquittal if you find that they had devised the alleged scheme to defraud, and in attempting to carry out the scheme, mailed any of the letters specified in the indictment. If they unlawfully appropriated all of the monies of the company or companies, that fact would not justify you in finding a defendant or defendants guilty if you do not find that such defendant or defendants had devised the scheme to defraud alleged in the indictment and mailed either of the letters specified in the first five counts of the indictment, and that such mailing was done for the purpose of carrying out the scheme or artifice alleged. You should consider this question in connection with each of said five counts of the indictment.

If the defendants or either of them made representations of the financial solvency of the corporations specified in the indictment for the purposes of getting others to part with their money, and mailed any or either of the letters specified in the indictment, knowing at the time of the mailing thereof that the companies were financially unsound, and that such representations [708] were false and untrue and were made as a part of the scheme to de-

fraud alleged in the indictment, and the mailing of such letters was for the purpose and with the intent of carrying out the scheme to defraud, as alleged, then as to such count or counts you should convict as to those defendants whom you find to have devised or joined in such scheme to defraud.

This rule should be applied by you with respect to the various allegations of the indictment, describing the alleged activities of the defendants in carrying out the scheme or artifice set out in the indictment, such as representations that big dividends would be paid, or had been voted, or that the officers of the corporation were not drawing salaries, etc.

If you find any defendant or all the defendants were acting in good faith, believing in the financial soundness of the companies and had no knowledge of the unsound financial structure thereof until after the letters were mailed, and made no false representation as a part of the scheme to defraud, as to such defendant or defendants you should acquit on that count or those counts in which you so find.

You have been instructed that any person who takes part in the carrying out of a scheme to defraud, such as bookkeepers, stenographers or salesmen can be convicted as a principal. This does not mean that every employee of the company wherein some of the officers had devised a scheme to defraud, can be convicted for carrying out such a scheme under the supervision of the officers who might have devised such scheme, nor that all the officers of the corporation or corporations not engaged in such

scheme, can be convicted therefor, but in order to convict such employees or officers, it is incumbent upon you to find that they had joined in effecting of such scheme, or that they had become acquainted with the scheme or device before the letters charged in the various counts of the indictment were mailed, and there- [709] after performed some act calculated to further carry out the scheme to defraud alleged in the indictment with the intent and knowledge that such act would be so effective.

In short, the question for you to determine as to the first five counts of the indictment, is whether or not any or all of the defendants mailed or aided or abetted in the mailing of a letter as described in the indictment for the purpose of carrying out the scheme to defraud therein alleged. As to each defendant with respect to whom you answer that question in the affirmative beyond a reasonable doubt as to any count, on that count you should return a verdict of guilty as to such defendant; as to each defendant with respect to whom you answer that question in the negative as to any count as to whom you entertain a reasonable doubt, on that count you should return a verdict of not guilty.

You are instructed, gentlemen of the jury, that under the law knowledge of an existing fact once shown to exist creates a presumption that the same knowledge existed at any future date but it creates no presumption that such knowledge existed at any time prior to the date shown by the evidence. Of course, you are entitled to take into consideration

all of the evidence to determine whether that knowledge, in fact, exists.

Now gentlemen, the sixth count of the indictment charges that commencing on or about December 1, 1929, and continuing until on or about January 1, 1938, the defendants above named conspired, combined, confederated and agreed together and with each other to commit diverse offenses against the United States, namely: The offenses charged against these defendants in the diverse counts of this indictment preceding the sixth count, to-wit: That said defendants did thereafter do diverse acts to effect the object of said unlawful and felonious conspiracy, to-wit: The several acts of placing letters in the post office of the United States at Phoenix, Arizona, and causing said letters [710] to be sent and delivered by mail as described in the first five counts of the indictment, and the numerous acts of preparing said letters for mailing and delivery, and the making of the false and fraudulent pretenses, representations and promises in the first count of the indictment described, and obtaining by means thereof the monies and properties of said persons named in the first count of the indictment and referred to and described as the persons to be defrauded, as well as certain other overt acts.

Section 88 of Title 18 of the United States Code Annotated, defining the crime of conspiracy and charged in the sixth count of the indictment, provides as follows:

“If two or more persons conspire, either to commit any offense against the United States, or to

defraud the United States in any manner and for any purpose, and one or more of such parties do any act to effect the object of the conspiracy, each of the parties to such conspiracy" shall be punished as specified therein.

Now, the use of the mails in furtherance of a scheme to obtain money or property by means of false and fraudulent pretenses, representations and promises differs from a conspiracy, in that it is the depositing in or taking out of a letter pursuant to such scheme which constitutes, or is the gist of the offense under the mail fraud statute which has been read to you, and of this offense one defendant alone may be convicted, while a conspiracy is the agreement and confederating together of two or more persons to commit an offense against the United States, and the commission of an overt act by either or any of the conspirators to effect the object of the conspiracy. The necessary elements of the crime of conspiracy under this law of the United States are—

First: An object to be accomplished, which must be the commission of an offense against the United States. Now, in this [711] case, the offense charged is the use of the mails in furtherance of a scheme to obtain money or property by means of false or fraudulent pretenses, representations and promises.

Second: A plan or scheme embodying means to accomplish the object.

Third: An agreement or understanding between two or more persons whereby they become definitely

committed to co-operate for the accomplishment of the object by the means embodied in the scheme, or by an effectual means.

Fourth: An overt act by one or more of the conspirators to effect the object of the conspiracy.

Now, the indictment alleges that in furtherance and in execution of the conspiracy charged in the sixth count of the indictment, the defendants committed the various overt acts set forth at length in the indictment, which has been read to you.

To constitute a conspiracy it is not necessary that two or more persons should meet together and enter into an express or formal agreement for the unlawful venture or scheme, or that they should directly by words or in writing, state between themselves or otherwise what the unlawful plan or scheme is to be, or the details thereof, or the means by which the unlawful combination is to be made effective. It is sufficient if two or more persons in any manner, or through any contrivance, positively or tacitly come to a mutual understanding to accomplish a common and unlawful design. In other words, when an unlawful end is sought to be effected, and two or more persons, actuated by the common purpose of accomplishing that end, work together in any way in furtherance of the unlawful scheme, every one of said persons becomes a member of the conspiracy. The success or failure of the conspiracy is immaterial, but before the defendants or either of them may be found guilty of the charge it must appear beyond a reasonable doubt that a conspiracy was

formed as alleged in the [712] indictment, and that the defendants were active parties thereto.

You are instructed, gentlemen, that before one can be convicted as a partner to a criminal co-partnership or as a co-conspirator, the defendant must be shown beyond a reasonable doubt to have been actuated by an intent to promote the common design. If persons fraudulently pursue by their own acts the same unlawful purpose, one performing one act, and a second independently another act, all with a view to promote the common object, the conclusion is warranted that they are moved by a common corrupt purpose to effect the object. Conscious and wilful cooperation in some form must be shown. If a person understanding the unlawful character of a transaction, encourages, advises, or in any manner, with a purpose of forwarding the enterprise or scheme, assists in its prosecution, he becomes such a partner or co-conspirator in the criminal partnership or conspiracy. And so, a new party coming into a conspiracy after its inception, with knowledge of its purpose and object, and with intent to promote the same, becomes a party to all of the acts done before his introduction into the unlawful combination, as well as the acts done afterwards. Joint assent and joint participation in such partnership or conspiracy may be found, like other facts, as an inference from facts proven.

Every person, when he connects himself with the enterprise, no matter whether he may not individ-

ually have been an actor in any particular fraudulent transaction, who, knowing of the alleged fraudulent character of the promotion of the joint enterprise loans his efforts to its success, is a co-conspirator within the law. He may not have done a fraudulent thing, that is, by himself. The mere allowing himself to assist in the execution of what he knows to be a fraudulent scheme is sufficient to connect him with the conspiracy. As I have heretofore said, technically, clerks and other minor subordinates who know the denounced frauds are being [713] practiced, if at all, and who remain in the employment in a merely routine activity, performing no act in itself fraudulent, such as taking dictation, making book entries, or writing letters or the like, are co-conspirators. [714]

The evidence in proof of the conspiracy may be circumstantial. Where circumstantial evidence is relied upon to establish the conspiracy or any other essential fact, it is not only necessary that all the circumstances concur to show the existence of the conspiracy or fact sought to be proved, but such circumstantial evidence must be inconsistent with any other rational conclusion. That is, you are to consider all of the circumstances and conditions shown in evidence, and if it appears to you as reasonable men that, even though there is no direct evidence of the actual participation in the alleged offense by the defendants, or two or more thereof, a reasonable inference from all of the facts and circumstances does to your minds, beyond a reasonable



doubt, show that the defendants, or two or more thereof, were parties to the conspiracy, then you should make the deduction and find accordingly.

As you have observed from the reading of the indictment, certain overt acts are alleged to have been committed for the purpose of effectuating the objects of the alleged conspiracy, as you will find specified in the sixth count—this you will find specified in the sixth count of the indictment; that is, carrying it into effect, and these overt acts, while essential under the law to be charged and shown are, nevertheless, no part of the object of the conspiracy. Overt acts, which simply means open and manifest acts which may be established by proof, are acts intended to aid the conspirators in effectuating and carrying out the purpose of their alleged plan or conspiracy. These acts themselves need not necessarily be criminal in their nature. They may be as innocent as writing and mailing a perfectly legitimate letter, or depositing or withdrawing money from a bank, but if that act are those acts are done as a part of the purpose to effect the conspiracy, it is, or they are criminal to the extent [715] that they enter into and make up the effectuating of the conspiracy under the law.

The Court instructs you, gentlemen, that if you believe from the evidence in this case beyond a reasonable doubt that a scheme or artifice to obtain money or property by means of false or fraudulent pretenses, representations or promises as charged in counts one to five inclusive in the indictment, or a conspiracy existed between two or more of the

defendants named in the indictment as charged in count six, then in such a case you may take into consideration any acts or declarations you may find from the evidence to have been done or made by any co-schemer or co-conspirator in furtherance of the common purpose during the existence of such scheme or conspiracy, but you should not take into consideration acts or declarations of any of the defendants herein not done or made during the existence of such scheme or conspiracy. Any acts done or statements made by any defendant after such scheme or conspiracy has terminated, if you find from the evidence that the same had existed, or not made or done during the existence of any such scheme or conspiracy, then such acts or statements can only be considered by you as against the defendant performing such acts or making such statements, and not against the other defendants named, unless such other defendant or defendants assented to or ratified such acts or statements so made,

Now you have before you, gentlemen, the separate cases of each of the defendants named in the indictment and now on trial before you, and each defendant is entitled to separate consideration just as distinct as if he were being tried alone, and you may find as you weigh the effect of the evidence, one not guilty of the alleged fraudulent practices and mailing of the letters specified in furtherance thereof as alleged, yet if you [716] find that in any case he collaborated in the promotion of the alleged scheme with one of the others to that situation, the

instructions herein on the law of conspiracy become applicable, and you may apply them.

As to the sixth count, it must be proved beyond a reasonable doubt that one or more of the defendants conspired with one or more of the other defendants named in the indictment to use the United States mails in furtherance of the scheme or artifice alleged to obtain money or property by false and fraudulent pretenses and promises, and that one or more of said defendants or co-conspirators committed one or more of the overt acts specified as the overt acts in count six. In other words, one defendant may be convicted of a violation of the mail fraud statute, but a conspiracy charge must fall unless two or more persons shall have been proven beyond a reasonable doubt to have joined in the same.

As you have been instructed, under the mail fraud statute there need not be an intent to use the mails. If any person or persons plan a method of obtaining money or property by means of false pretenses, promises and representations, he may not even have intended to use the mails at all, but if during the course of the plan he or anyone under his direction uses the mails to carry out his fraudulent enterprise, he becomes guilty of a violation of this statute which is, as I stated, the mail fraud statute.

Under the conspiracy charge, the burden of proof is heavier upon the Government, as it is incumbent upon the Government not only to show beyond a reasonable doubt the confederation or agreement to commit an offense against the United States, but

that the conspiracy in this case was formed with the intent to use the Post Office Department in furtherance of a scheme so to obtain money by means of false and fraudulent pretenses, [717] representations and promises.

During the trial of this case the Government has introduced what is generally known as expert testimony; that is to say, the testimony of an expert accountant who, by reason of his education and experience along the lines of evidence given by him, is deemed to have such skill and knowledge thereof as to make his opinions admissible for the purpose of aiding the jury in arriving at a conclusion as to the disputed facts in the case. While great weight should always be given to the opinions of those familiar with the sciences, or those who have made studies of particular subjects, you are instructed that this class of testimony is subject to the same scrutiny as any other evidence admitted in the case. The expert witness is to be subjected to the same test as other witnesses, and you can look to his appearance and demeanor on the stand, any bias and interest in the case, if any shall appear to you, and, in fact, test his credibility as you would that of any other witness. You may accord the testimony of such witness whatever weight under all the circumstances as you may find it entitled, or you may disregard it entirely, or in part, in so far as you may believe from all the facts and circumstances in the case and the common experience of man-kind that it is unre-

liable. In short, the opinions of the expert in this case are to be considered by you in connection with all the other evidence introduced here, and subject to the same tests.

Testimony as to the good character and reputation for honesty and integrity, truth and veracity and as good law-abiding citizens in the communities in which they reside has been received in evidence in the case in behalf of the defendants Raymond F. Marquis, George H. Cornes, Harry S. Marquis and Earl Canning, and you should consider such evidence, together with all the [718] other evidence in the case, in arriving at a verdict, not only where a doubt exists as to the guilt of any of said defendants, but for the purpose of creating a reasonable doubt thereof; but if, from all the evidence in the case, including the evidence of good character and reputation of a particular defendant for the characteristics set forth, you are satisfied of his guilt beyond a reasonable doubt, such evidence of good character and reputation will not avail the said defendant as a defense, or entitle him to an acquittal.

The law, gentlemen, permits a defendant at his own request to testify in his own behalf. The defendants herein have availed themselves of this right. Their testimony is before you and you may consider how far it is credible. The deep personal interest which they have in the result of this case may be considered by you in weighing their evidence and in determining how far, or to what extent, if

at all, it is worthy of credit. In considering the credibility of, or the weight which you should attach to the testimony of a defendant, you should regard, among other things, the inherent probability or improbability of their statements, and to what extent the same have been corroborated or contradicted by other evidence in the case, whether documentary or oral. Where a witness has a direct personal interest in the result of a case, especially in a criminal case, the temptation may be strong to color, pervert or withhold the facts.

Now, you should not consider as evidence any statement of counsel made during the trial, unless such statement is made as an admission or stipulation concerning the existence of a state of facts, or unless such statement is borne out by the evidence produced here before you.

You must not consider for any purpose any evidence offered and rejected, or which has been stricken out by the court; [719] such evidence is to be treated by you as though you had never heard it.

You are to decide this case solely upon the evidence that has been introduced before you, and the inferences which you may deduce therefrom, and such presumptions as the law may deduce therefrom as stated in these instructions, and upon the law as given you herein.

The Court instructs you, gentlemen of the jury, that you are not to be influenced in arriving at your verdict by passion or prejudice against any person. Personal beliefs and feelings not supported by evi-

dence should have no place in entering into your deliberations.

You gentlemen are not responsible for any punishment which may come to the defendants, or either of them, if convicted, and you should not consider that whatsoever in your deliberations. Human punishment is not inflicted in a spirit of revenge. Its object is not to inflict pain and suffering as an act of retaliation merely, but the guilty are punished that the innocent may be protected. It is the example to those who may contemplate crime that they will suffer the same punishment.

In other words, your sole duty is to decide whether the defendants or either of them are guilty or not guilty of the offenses or either thereof with which they are charged. The question of punishment is left wholly to the court, except as the law circumscribes its power.

As has been stated, gentlemen, the defendants herein are charged by the first five counts of the indictment with having devised, or intending to devise a scheme or artifice for obtaining money or property by means of false and fraudulent pretenses, representations or promises, and of using the United States mails in furtherance thereof. [720]

By the sixth count of the indictment the defendants are charged with the crime of conspiracy.

If, after a careful consideration of all the evidence in the case and the instructions of the court, you are satisfied beyond a reasonable doubt that the defendants, or either of them did commit any

or all of the acts set forth in the first five counts of the indictment, or aid and abet in the commission thereof, you would, by your verdict, find that defendant or those defendants of whose guilt you are satisfied beyond a reasonable doubt, guilty of such act or acts, and so state in your verdict. Unless you are satisfied of the guilt of the defendants, or either of them, beyond a reasonable doubt as to the first five counts of the indictment, you would, by your verdict, find such defendant or defendants of whose guilt you are not so satisfied beyond a reasonable doubt, not guilty. In other words, as to the first five counts of the indictment you can find all of the defendants guilty of all of the acts therein set forth, or not guilty as to all of the acts so set forth, or you can find one or more of the defendants guilty of all or any of the acts in the first five counts of the indictment set forth, or not guilty as to all or any of said acts.

As regards the sixth count of the indictment, you may find all of the defendants guilty as charged therein, or you may find any two or more of said defendants guilty thereof, as you may find from the evidence, or you may find all of said defendants not guilty, or you may find part of the defendants not guilty and others guilty of said charge.

As you have been heretofore instructed, a person cannot conspire with himself. Before you can find any defendant guilty on the sixth count of the indictment, you must find two or more of said de-



fendants conspired or confederated to use the United [721] States mails in furtherance of the scheme or schemes described in the indictment, and that one or more of said defendants so conspired and committed one or more of the overt acts specified in count six.

Now, gentlemen, when you retire to your jury room, you will select one of your number to act as your foreman and proceed with your deliberations on the evidence here submitted before you, and you will take with you the indictment of the grand jury, and with it you will also take forms of the verdict as to each of the defendants. The forms will be substantially in the following form: "As to the defendant (blank) we, the jury, duly empanelled and sworn upon our oaths find the defendant (blank) as charged in the first count of the indictment", and so on through the sixth count. There is a separate form of verdict for each defendant. As you reach your conclusions, you will specify in the blank form "guilty" or "not guilty" as coincides with your conclusions on that count, and so on through each form until you have completed your verdict on each count as to each defendant, and when you have completed the form of verdict in accordance with your findings, you will have that form as to each defendant in the matter filled out as the court has indicated, signed by your foreman, but it requires all twelve of your number to concur in reaching your verdict in this case.

Now do the defendants desire to offer exceptions or not?

Mr. Frazier: Yes, your Honor.

Mr. Whitney: If the court please, I have two.

The Court: Very well.

Mr. Whitney: Referring to page 36 of your Honor's instructions, your Honor instructed the jury——

The Court: Can't you refer to that paragraph? The reporter, under our rules—— [722]

Mr. Whitney: Yes. Page 36, your Honor has partly instructed the jury that "The official post mark of the post office, appearing on the letter or envelope containing the same set up in the respective counts of the indictment and which have been introduced in evidence is prima facie proof that any letters contained therein were mailed at the post office so appearing on said post mark."

As I understand the law, that instruction is absolutely correct, but it should go further and say: "But is no proof as to who mailed the letter". I am speaking of the Freeman case. We except to it on that ground. And on page 32 of the court's instructions, the court has instructed the jury that "It is the law that when the defendants, or either of them, incorporate statements or reports of others in his or their literature or printed matter, he or they adopt them as their own, and in such case they are responsible for such statements or reports \* \* \*".

That, of course, if the Court pleases, is true as far as it goes. It probably is corrected by some of the other instructions, but I think it should go further and say "That he is responsible for this if he has knowledge of their falsity". That is all on behalf of Mr. Hamilton.

Mr. Frazier: If the court please, on behalf of the defendant R. F. Marquis, objection is made to the giving of the instructions appearing as follows on Page 4 of the instructions; that is, the second instruction, in the second paragraph of that page. The court omits to say that certain things therein contained are and must be proven beyond a reasonable doubt from the testimony.

In making these objections, your Honor, they are in the main part purely formal and for the purpose of saving the record. On pages 7 and 8, the instructions on the duties of the jurors, do not correctly state the law as [723] the duty of the jurors, because in this provision it is contradictory and misleading. It is not complete in this, that it sets out in the beginning of the instructions that each juror must determine for himself and as his own mind indicates, and then later on in the instruction advises him that he must take the views of other jurors, and for that reason that is not complete.

Page 9, in the last paragraph of page 9, the instruction on circumstantial evidence disregards entirely the question of reasonable doubt.

Page 12 does not correctly state the law, and leaves an inference in this instruction, that fraud has and does exist regardless of the evidence and over-emphasizes that question.

Page 17. This instruction does not correctly state the law in this, that under the law a scheme must have been fraudulent from its inception.

The Court: All right, the next one.

Mr. Frázier: Page 30, if the Court please. That incorrectly states the law. It is ambiguous and misleading and not complete, and the incompleteness or lack of completeness is not added on the other instructions. That is the instruction of—

The Court: Yes, I have it.

Mr. Frazier: Doing bad things for good results. Page 31 is the question—on the question of reasonable doubt, and is left from the main portion of that instruction. Now, on page 32, the instruction is incomplete, in that it is ambiguous and omits the question of knowledge or intent entirely.

Page 34 is the instruction—is not complete, because it does not fully cover the question of employees and others in the instruction.

Pages 37 and 38. That instruction includes elements not [724] in evidence or in the indictment; prejudicial and does not correctly state the law or the facts.

The Court: All right, the next one.

Mr. Frazier: 49. Take 49, 51 and 52, those three pages on the law on conspiracy. It is nowhere

stated that in addition to the fact of conspiring together, the Government must prove beyond a reasonable doubt the doing of some of the overt acts.

The Court: All right, the next.

Mr. Frazier: Page 54 incorrectly states the law and lays too much stress upon the interest of the defendants. The defendant's testimony, under the law, should be considered just as any other—

The Court: Well, no argument about that. That is the instruction approved by the Appellate Court on two or three cases, as I recall.

Mr. Frazier: I understand. That is all the objections to the instructions. Now if I may, to shorten the time, I'd like to take an exception, if the court will rule on my objections. I think some of the others will have some different objections, and maybe then I will make my exceptions to the failure to give the instructions offered.

The Court: Well, the request you just made will be denied.

Mr. Frazier: Well, may I have an exception as to that?

The Court: Yes.

Mr. Whitney: I assume mine you deny also?

The Court: Yes.

Mr. Whitney: Exception.

Mr. Carson: May these exceptions be allowed on behalf of all defendants?

The Court: Of all defendants. [725]

Mr. Wilson: Of all defendants?

The Court: Yes.

Mr. Frazier: Now the defendant, R. F. Marquis excepts to the court's refusal to give instructions offered by him, and if I may I will just give the numbers of those as they appear in your record.

The Court: All right.

Mr. Frazier: Numbers 1, 2, 3, 4, 5, 6, 9, 10, 11, 12, 13, 14, 15, 17, 19, 20, 23, 24, 25, 27, 28, 29, 30, 31, and 35, for this reason, that they correctly state the law, and that the defendant, R. F. Marquis has the right, as an individual defendant here, to have instructions given for him separately and individually. I just want that in the record, and allowed that exception?

The Court: Yes. The reporter here, under the rules, is taking your objections. Do counsel have some more objections?

Mr. Carson: Yes, your Honor.

The Court: Yes, Mr. Carson.

Mr. Carson: On behalf of the defendant Earl Canning, I desire to except to the refusal of the court to give defendant's instructions Numbers 1, 2, 3, 4, 5, 6, 8, 9, 10, 11, 12, 13, 14, 16, 18, 19, 22, 23, 24, 26, 27, 28, 29, 30, 31 and 32, upon the grounds and for the reason that the instructions as requested correctly state the law applicable to the facts in this case; they are not adequately covered by the portions of the charge given by the court, and the defendant, Earl Canning, as an individual

defendant here, is entitled to have given to this jury the law as it applies to him.

The Court: Of course, the request made to amplify the instructions will be denied.

Mr. Carson: And an exception noted? [726]

The Court: And an exception noted.

Mr. Carson: And then, your Honor, I wish to except further to the modification of the defendant Canning's requested instruction 21.

The Court: Very well.

Mr. Carson: The court modified that, and I submit that the instruction as requested correctly states the law as applicable to the facts in this case and should have been given.

The Court: Any other?

Mr. Jones: Just for the purpose of the record, if your Honor please, I am not going through the instructions, but as the record discloses those instructions which were not given, may I adopt the arguments made by Judge Frazier and Mr. Carson in support of that?

The Court: You may, and the ruling is on each one of your individual instructions.

Mr. Jones: Not given or as modified as indicated by the record.

The Court: Very well.

Mr. Wilson: If the court please, the defendant Cornes excepts to the ruling of the court to give instruction number 8 as tendered by him, and number 10, number 11, number 12, number 13, number

15, 16, 17, 18, 20, 22, 23, 24, 27, 28 and 31, on the grounds that the tender and requested instructions correctly state the law as applicable to the evidence offered in this case, and that the refusal of the court to embody those instructions in the instructions given to the jury is error as far as the defendant Cornes is concerned. [727]

(Said charge of the court as above set forth comprises all of the instructions given to the jury on the trial of this case).

The defendant Earl Canning, prior to said charge, and prior to the argument of counsel, and at the time provided by the rules of the United States District Court for the District of Arizona, presented to the court and requested the court to give to the jury the following written instructions:

INSTRUCTIONS REQUESTED BY  
DEFENDANT EARL CANNING

Instruction No. 1

You are instructed to return a verdict of not guilty on the first count of the indictment for defendant Earl Canning.

Instruction No. 2

You are instructed to return a verdict of not guilty on the second count of the indictment for defendant Earl Canning.



Instruction No. 3

You are instructed to return a verdict of not guilty on the third count of the indictment for the defendant Earl Canning.

Instruction No. 4

You are instructed to return a verdict of not guilty on the fourth count of the indictment for defendant Earl Canning.

Instruction No. 5

You are instructed to return a verdict of not guilty on the fifth count of the indictment for defendant Earl Canning.

Instruction No. 6

You are instructed to return a verdict of not guilty on the sixth count of the indictment for defendant Earl Canning. [728]

Instruction No. 8

If you believe from the evidence that any witness has wilfully testified falsely as to any material fact, then you have the right to disregard the whole of such witness' testimony, except insofar as the same may be corroborated by other credible testimony or facts and circumstances in the case.

Instruction No. 9

The Court instructs the jury that where two or more wholly separate and distinct acts are charged against all of the defendants in one count of an

indictment it is necessary, before you can arrive at a verdict of guilty as to any defendant, that you should believe beyond a reasonable doubt and to a moral certainty that any such defendant feloniously participated in both or all of such events or transactions charged in the indictment as constituting a single offense.

#### Instruction No. 9-A

The jury are instructed that this being a criminal prosecution each of the defendants is presumed to be innocent until the contrary has been shown beyond a reasonable doubt. This presumption of innocence attends the defendant throughout the trial. The burden of overcoming this presumption rests upon the Government and never reverts to the defendant, and unless the Government has satisfied this requirement as to each defendant the jury will acquit such defendant.

#### Instruction No. 10

The Court instructs you that before you can convict in this case you must find that the defendants or some of them combined and confederated together, prior to the mailing of the letter set out in the indictment, or that after the fraudulent scheme, if any there was, formed by some of the defendants, other defendants, not parties to the original scheme, joined it with [729] guilty knowledge of its false character and aided it by mailing or causing to be mailed the letter set out in the in-

dictment in execution thereof. The existence of a scheme to defraud is a necessary prerequisite or condition to the commission of the offense.

### Instruction No. 11

You are instructed that, where a conviction for a criminal offense is sought upon circumstantial evidence, the prosecution must not only show by evidence beyond a reasonable doubt that the alleged facts and circumstances are true, but they must be such facts and circumstances as are absolutely incompatible, upon any reasonable hypothesis, with the innocence of the accused, and incapable of explanation upon any reasonable hypothesis, other than that of the guilt of the accused, before a verdict of guilty can be found.

In this class of cases the jury must be satisfied, beyond a reasonable doubt, that the offense charged has been committed (by some one of the defendants) in the manner and form as charged in the indictment, and then they must not only be satisfied that all the circumstances proved are consistent with the defendant having committed the act, but they must also be satisfied that the facts are such as to be inconsistent with any other rational conclusion than that such defendant is the guilty person, before a verdict of guilty can be found. It is your first duty to determine from the evidence what facts and circumstances are thereby established, and then to draw from such facts and circumstances, after carefully examining and weighing

them, your conclusions as to the guilt or innocence of such defendant. It is your duty to exercise great care and caution in drawing conclusions from proved facts. Such conclusions must be fair and natural and not forced and artificial. Unless all facts and circumstances taken together are of such a conclusive nature as to [730] establish beyond a reasonable doubt that the accused is guilty as charged, then he must be acquitted. It is not sufficient that conclusions create a probability of guilt, though a strong one, and if, therefore, assuming all the facts to be true which the evidence tends to establish, they may yet be accounted for upon any hypothesis which does not include the guilt of the accused, the proof fails. It is essential, therefore, that the circumstances, taken as a whole, and giving them their reasonable and just weight, and no more, should to a moral certainty exclude every other hypothesis. If then, all the facts and circumstances established by the evidence beyond a reasonable doubt can be reconciled with any reasonable hypothesis of any defendant's innocence, then it is your duty to acquit such defendant.

#### Instruction No. 12

I have stated to you that the offense may be established by circumstantial evidence; but circumstantial evidence, to warrant a conviction in a criminal case, must be of such a character as to exclude every reasonable hypothesis but that of guilt of the offense imputed to the defendant, or in

other words, the facts proved must all be consistent with and point to his guilt only, and inconsistent with his innocence. The hypothesis of guilt should flow naturally from the facts proven, and be consistent with them all. If the evidence can be reconciled either with the theory of innocence or with guilt, the law requires that the defendant be given the benefit of the doubt, and that the theory of innocence be adopted.

#### Instruction No. 13

You are instructed that as to defendant Earl Canning you must consider the evidence given as it relates to him specifically and determine whether or not you are satisfied beyond a reasonable doubt that he, with intent to defraud, knowingly participated in any criminal act or aided or abetted in the commission of any criminal act charged in the indictment. [731]

#### Instruction No. 14

The Court instructs the jury that where all of the circumstantial evidence is as consistent with innocence as with guilt, a verdict of guilty cannot be rendered.

#### Instruction No. 16

I further instruct you that even though you may find from the evidence that the representations made in the letters and circulars received in evidence on the part of the United States were untrue, nevertheless, if the defendants, or any of them, believed

and had reason to believe such representations to be true, no matter how inaccurate such belief may turn out to be, such belief would be a complete defense.

#### Instruction No. 18

The Court instructs the jury that it is not enough, in order to find a defendant guilty on a criminal offense, to suspect that he is guilty thereof, nor even that you believe that there is a strong probability of guilt. It is essential that you believe any such defendant guilty beyond all reasonable doubt, and such belief must be induced by facts and circumstances appearing on the trial which may be considered by you in view of your experience with the ordinary affairs of life.

#### Instruction No. 19

You are instructed that the burden of proof is upon the Government to prove beyond a reasonable doubt and to a moral certainty each and every material allegation of the indictment, and if you believe from all of the evidence that the Government has failed to prove beyond a reasonable doubt any material allegation of the indictment, then you must render a verdict of not guilty. [732]

#### Instruction No. 22

You are further instructed that the burden is upon the Government to prove beyond a reasonable doubt and to a moral certainty as to each defendant that he, or they, or some one under the direction of one or more of the defendants, deposited the mail

matter charged as constituting an offense in the United States Mails.

### Instruction No. 23

The Court instructs you that a prosecution under Section 215 of the Criminal Code of the United States involves two elements, both of which must be proved beyond a reasonable doubt and to a moral certainty. One of these elements is called the gist of the offense and consists of depositing in the United States mails any letter, circular, postal card, or other matter. The mere use of the United States mails, however, does not itself constitute an offense. The second element consists of what is known as a scheme, artifice or device to defraud. It is, therefore, incumbent upon the Government to prove beyond a reasonable doubt and to a moral certainty that a scheme, artifice or device to defraud actually existed as charged by the indictment, and that in furtherance thereof United States mails were used. It is, therefore, incumbent upon you, before you can convict the defendants, or any of them, to find from the evidence, beyond a reasonable doubt and to a moral certainty, that any such defendant not only mailed or caused to be mailed some letter, card, circular, or other matter, but also that he participated in devising a scheme or artifice to defraud. Unless both of these elements are proved beyond a reasonable doubt there can be no such conviction of any defendant as to whom such reasonable doubt exists.

## Instruction No. 24

The Court instructs the jury that you cannot presume from the fact that a given financial condition existed on one date, the same condition existed previously or subsequently to said date. Before you can find the representations made by the defendants, or any of them, were false or untrue, you must also be able to find from the evidence and beyond a reasonable doubt what the facts and circumstances actually were at the time any such representation was made, and at no other time or times.

## Instruction No. 26

You are instructed that evidence of good character of defendant Earl Canning has been received. This evidence is as proper for your consideration as that of any other fact in the case and the weight to be given such evidence is in your hands. Proof of good character in connection with all the other evidence in the case may generate a reasonable doubt, which entitles the defendant Earl Canning to an acquittal, even though without such proof of good character the jury would convict him.

## Instruction No. 27

You are instructed that even if you should find beyond a reasonable doubt that financial statements made by defendant Earl Canning were erroneous, still you cannot convict him on any count unless you are satisfied that at the time he made them, he knew they were false and fraudulent and that he knowingly made them



with intent to defraud, and unless you are so satisfied beyond a reasonable doubt you must return a verdict of not guilty for defendant Earl Canning on each and every count of the indictment. [734]

#### Instruction No. 28

You are instructed that the only evidence offered against defendant Earl Canning is that he at times kept the books and made certain financial statements for State Securities Corporation and Union Reserve Life Insurance Company. Unless you are satisfied beyond a reasonable doubt that he, with intent to defraud, knowingly made false and fraudulent entries in the books or, with intent to defraud, knowingly made false and fraudulent financial statements, then you must, as to him, return a verdict of not guilty on each count of the indictment.

#### Instruction No. 29

The Court instructs the jury that you cannot consider any evidence offered by the Government as binding upon the defendant Earl Canning if the government has failed to connect said defendant with such evidence, or with events or transactions which any such evidence attempts to prove.

#### Instruction No. 30

You are further charged that the burden is on the Government to prove, beyond a reasonable doubt, and to a moral certainty, the fraudulent character of the scheme set out in the indictment, and that it was so fraudulent from the beginning.

## Instruction No. 31

You are instructed that the defendants in a criminal case are not required to satisfy the jury of the existence of any fact, which, if true, is a complete defense. It is sufficient if such defendants create in the minds of the jury a reasonable doubt of the existence of such fact. [735]

## Instruction No. 32

The Court instructs the jury that it is the duty of each and every member of the jury in this case to decide the issues presented for himself, and if, after a careful consideration of all of the evidence of the case, and the instructions of the Court on the law and a free consultation with his fellows, there is any single juror who has a reasonable doubt of the defendants' guilt, it is his duty, under his oath, to stand by his conviction and favorable to a finding of not guilty. He should never yield his convictions simply because some or even all of the other jurors may disagree with him.

The Court refused to give said instructions as requested by defendant or any similar instructions.

The defendant, in the presence of the jury, and before they retired to deliberate upon their verdict, excepted to the ruling, refusing to give to the jury defendant's requested instructions as above set forth, upon the grounds that the evidence showed conclusively that defendant Earl Canning never entered into any conspiracy with any of the other defendants; that he had no control or super-

vision of the bookkeeping of the corporations; there was no showing that the defendant made or caused to be made any entries in the books of Union Reserve Life Insurance Company; that there was no evidence that defendant Canning had anything to do with or knew anything about the writing and mailing of the letters set forth in the various counts of the indictment; that there was no evidence to show that the defendant Earl Canning was in any way connected with or had any knowledge of any of the overt acts set out in Count 6 of the indictment; that the instructions given by the Court do not fully and clearly state the law applicable to the defendant Canning, and that the instructions offered by defendant Canning and refused [736] by the court do clearly state and set forth the law applicable to the facts in the case and the defendant Canning, and for the further reason that a further objection was made by defendant Canning that defendant Canning had a right to have the jury separately instructed as to the law relative to him in this case, and the exceptions of the defendant Canning to the court's refusal to give said requested instructions was duly entered in the record.

The defendant Canning offered and asked that it be given in his behalf the following instruction:

Instruction No. 21

You are instructed that with respect to the declarations of one defendant made by him outside of the presence of any other defendant, that before

such declarations are competent as to any such absent defendant, it must be proved beyond a reasonable doubt, by independent evidence, that the scheme or artifice to defraud alleged in the indictment had been devised, and that such absent defendant was a party thereto. It must further be established beyond a reasonable doubt that such declaration was made by such defendant in furtherance of the said scheme or artifice. It is only where knowledge and active participation, or an express or implied ratification of the alleged fraudulent scheme or device can be proved, that one defendant is bound by the statements or declarations of another. The fact that the declarations were made before a defendant may have become associated with an alleged scheme or conspiracy, if any there was, does not of itself render the declarations inadmissible against him.

The court refused to give defendant's Instruction No. 21 in the form in which it was offered by the defendant, and modified said instruction, leaving out of it vital elements. That defendant's [737] Instruction No. 21 clearly states the law relative to the defendant in this case and this defendant duly excepted to the court's modifications of said instruction, and said exception was entered in the record. [738]

It appearing that the defendant, Earl Canning, having duly taken his appeal on the 13th day of May, 1940, the Court, upon motion of the defendant, entered an order in accordance with Rule 9 of the Rules of Procedure in criminal cases, pro-

mulgated by the United States Supreme Court, allowed the defendant forty days from said date within which to settle the bill of exceptions and file assignments of error. Thereafter, and within thirty days from the 13th day of May, 1940, the Court, on motion of the defendant and in accordance with the Rules of Procedure in criminal cases, promulgated by the United States Supreme Court, extended the time within which this defendant might prepare, file and settle the bill of exceptions and file assignment of errors complained of, to July 1, 1940.

That after the taking of the appeal in this case, upon stipulation of the attorneys for this defendant and the United States District Attorney for the *District of Attorney*, an order was made directing that all of the exhibits received in evidence in this cause should be forwarded to the Clerk of the United States Circuit Court of Appeals, Ninth Circuit, at San Francisco, and by virtue of said order all of said exhibits are incorporated herein and made a part hereof. Within the time allowed by the rules of the United States District Court for the District of Arizona, and the order of the Judge of said District Court and the Judge of the Circuit Court of Appeals for the Ninth Circuit, a true and correct copy of this bill of exceptions was served on counsel for the plaintiff before being presented to the Judge of this Court, and was lodged with the Clerk of this Court prior to such presentation.

Forasmuch as the matters above set forth do not fully appear of record, and in furtherance of

justice and that right may be done, the defendants tender and present the foregoing as [739] their bill of exceptions in this cause, and pray that the same may be certified, settled and allowed, and signed and approved as complete, true and correct by the Judge of this Court who presided at the trial of this case, and made a part of the record in this case, which is accordingly done this 31st day of July, 1940.

ALBERT M. SAMES,  
Judge of the United States District Court for the  
District of Arizona, who presided at said trial.

Service of a copy of the foregoing proposed bill of exceptions admitted this 1st day of July, 1940.

F. E. FLYNN,  
United States District Attorney.

Received a copy of the Bill of Exceptions this 1st day of July, 1940.

F. E. FLYNN,  
U. S. Atty.

[Endorsed]: Proposed Bill of Exceptions of deft. Canning. Filed Jul. 1, 1940. Edward W. Scruggs, Clerk United States District Court for the District of Arizona. By Gwen J. Ballard, Deputy Clerk.

[Endorsed]: Bill of Exceptions. Filed Jul. 31, 1940. Edward W. Scruggs, Clerk United States District Court for the District of Arizona. By Wm. H. Loveless, Chief Deputy Clerk. [740]

[Title of District Court and Cause.]

PRAECIPE OF DEFENDANT EARL CANNING FOR RECORD ON APPEAL

To the Clerk of the District Court of the United States, for the District of Arizona:

Defendant Earl Canning hereby requests that you make a transcript of the record to be filed in the United States Circuit Court of Appeals for the Ninth Circuit, pursuant to his appeal taken in the above entitled cause, and to include in such transcript of record the following:

1. The indictment.
2. Motion of defendant Earl Canning for Bill of Particulars.
3. Bill of Particulars.
4. Objections of defendant Earl Canning to Bill of Particulars as filed and motion for order requiring government to supplement the same.
5. Verdict as to defendant Earl Canning.
6. Sentence and judgment as to defendant Earl Canning imposed May 13, 1940.
7. Defendant Earl Canning's Notice of Appeal.
8. Defendant Earl Canning's Demurrer to the Indictment.
9. Bail Bond on appeal.
10. The Court's instructions to the jury. [741]
11. Instructions requested by defendant Earl Canning.
12. Order of the Circuit Court of Appeals fixing time for settling of Bill of Exceptions and directing the sending up of exhibits.

13. All exhibits in evidence.
14. Clerk's statement of docket entries.
15. The following minute entries:
  - (a) Minute entry of December 18, 1939;
  - (b) Minute entry of April 20, 1940;
  - (c) Minute entry of May 13, 1940.

16. Bill of exceptions when settled, allowed and approved by the Court and made a part of the record.

17. Certificate of United States District Judge to Bill of Exceptions and order approving, settling and allowing and making same part of the record herein.

18. Assignments of error (when filed).

19. This praecipe.

Dated at Phoenix, Arizona, this 29 day of June, 1940.

CHAS. A. CARSON,  
GENE S. CUNNINGHAM,  
E. G. FRAZIER,

Attorneys for Defendant  
Appellant Earl Canning.

Received copy of within Praecipe this 1st day of July, 1940.

F. E. FLYNN.

[Endorsed]: Filed Jul. 1, 1940. [742]



[Title of District Court and Cause.]

SUPPLEMENTAL PRAECIPE OF DEFENDANT GEORGE H. CORNES FOR RECORD ON APPEAL.

To the Clerk of the District Court of the United States for the District of Arizona:

Defendant George H. Cornes hereby requests that you make a supplemental transcript of the record to be filed in the United States Circuit Court of Appeals for the Ninth Circuit pursuant to his appeal taken in the above entitled cause and the order of the above entitled Court made and entered on the 28th day of June, 1940, and to include in such supplemental transcript of record the following:

1. Stipulation dated June 28, 1940, providing for one bill of exceptions, praecipe, and assignments of error in the appeals of defendants Earl Canning and George H. Cornes.

2. Order of the above entitled Court made and entered June 28, 1940, directing that one bill of exceptions, praecipe for record on appeal, and assignments of error be filed in behalf of defendants Earl Canning and George H. Cornes on appeal.

3. Petition of defendant George H. Cornes for a suspended sentence and the letters and exhibits attached thereto.

4. Supplemental assignments of error of defendant George H. Cornes.

5. This supplemental praecipe.

Attorney for Defendant Appellant  
George H. Cornes.

Received copy of the within this 1 day of July,  
1940.

F. E. FLYNN,  
U. S. Atty.

Dated at Phoenix, Arizona, this 1st day of July,  
1940.

GEO. T. WILSON,

[Endorsed]: Filed Jul. 1, 1940. [743]

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In the United States District Court for the District  
of Arizona

CLERK'S CERTIFICATE

United States of America,  
District of Arizona—ss.

I, Edward W. Scruggs, Clerk of the United States District Court for the District of Arizona, do hereby certify that I am the custodian of the records, papers and files of the said Court, including the records, papers and files in the case of United States of America, Plaintiff, versus Earl Canning and George H. Cornes, Defendants, No. C-5800 Phoenix, on the docket of said Court.

I further certify that the attached pages, numbered 1 to 743, inclusive, contain a full, true and correct transcript of the proceedings of said cause and all the papers filed therein, together with the

endorsements of filing thereon, called for and designated in the praecipe and supplemental praecipe filed in said cause and made a part of the transcript attached hereto, as the same appear from the originals of record and on file in my office as such Clerk, in the City of Phoenix, State and District aforesaid, except the exhibits in evidence, the originals of which have been ordered transmitted by me with the certified transcript of record.

I further certify that the Clerk's fee for preparing and certifying to this said transcript of record amounts to the sum of \$112.10, and that said sum has been paid by counsel for the appellants.

Witness my hand and the seal of said Court this 14th day of August, 1940.

[Seal]

EDWARD W. SCRUGGS,  
Clerk. [744]

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[Endorsed]: Nos. 9509, 9531. United States Circuit Court of Appeals for the Ninth Circuit. No. 9509. George H. Cornes, Appellant, vs. United States of America, Appellee. No. 9531. Earl Canning, Appellant, vs. United States of America, Appellee, Transcript of Record. Upon Appeals from the District Court of the United States for the District of Arizona.

Filed August 24, 1940.

PAUL P. O'BRIEN,

Clerk of the United States Circuit Court of Appeals for the Ninth Circuit.

In the United States Circuit Court of Appeals for  
the Ninth Circuit

No. 9509

GEORGE H. CORNES,

Appellant,

vs.

UNITED STATES OF AMERICA,

Appellee.

DESIGNATION OF POINTS ON WHICH APPELLANT INTENDS TO RELY ON APPEAL, AND OF RECORD ON APPEAL.

The appellant, George H. Cornes, adopts the Assignments of Error filed in the District Court as the points on which he intends to rely in this appeal, and designates the printing of the transcript of the record in its entirety as prepared and sent up by the Clerk of the District Court.

Dated at Phoenix, Arizona, this 3d day of September, 1940.

GEO. T. WILSON,  
Attorney for Appellant.

Received copy this 3d day of September, 1940.

H. E. FLYNN,  
Attorney for United States.

[Endorsed]: Filed Sep. 5, 1940. Paul P. O'Brien,  
Clerk. [745]

[Title of Circuit Court of Appeals and Cause.]

STATEMENT OF POINTS ON WHICH APPELLANT INTENDS TO RELY ON APPEAL AND DESIGNATION OF RECORD ON APPEAL.

The appellant, Earl Canning, adopts the Assignments of Error filed in the District Court as the points on which he intends to rely in this appeal, and designates the printing of the transcript of the record in its entirety as prepared and sent up by the Clerk of the District Court.

Dated at Phoenix, Arizona, this 30 day of August, 1940.

GENE S. CUNNINGHAM,

CHAS. A. CARSON,

E. G. FRAZIER,

Attorneys for Appellant.

[Endorsed]: Filed Sep. 3, 1940. Paul P. O'Brien, Clerk. [746]

